

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Appeal No. 740/2010**

% **Decided on: 19th May, 2011**

HARISH KUMAR Appellant
Through: Mr. R.N. Mittal, Sr. Advocate with Mr.
Manoj Kumar and Mr. Mohit Garg,
Advocates

versus

CBI Respondents
Through: Dr. A.K. Gautam, Standing Counsel
with Mr. Puneet Yadav, Advocate.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not Necessary |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MUKTA GUPTA, J.

1. In the present appeal, a challenge is laid to the judgment dated 31st May, 2010 convicting the Appellant for offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1998(in short the P.C. Act) and the order on sentence dated 2nd June, 2010 whereby the Appellant has been awarded a sentence of Rigorous Imprisonment for a period of three years and a fine of ₹10,000/- and in default of payment of fine, to further undergo simple imprisonment for three

months on both the counts i.e. Section 7 and Section 13 (2) read with Section 13 (1) (d) of the P.C. Act.

2. The brief facts leading to the filing of the present appeal are that on a written complaint dated 4th February, 1993 Ex. PW5/A by PW5 Sh. Yogesh Kumar Agarwal to the CBI that the Appellant was demanding ₹500/- as illegal gratification for installing a PCO connection at the shop of the PW5 situated at 9/51, Durga Market, Khichripur, Delhi 110091, a case was registered and a trap was laid by PW 10 Inspector D.M. Sharma. The trap team consisted of other CBI officials besides PW10 and trap witnesses PW6 Sh. Surinder Kumar and PW7 Jaganath both Assistant Grade-II. PW 5 produced 10 G.C. notes of ₹50/- denomination, the numbers whereof were noted vide Ex. PW 5/B and the same were treated with the solution. After completing the pre-trap formalities wherein PW 7 was asked to act as shadow witness, the trap party along with PW 5 reached the office of SDO (P), Mayur Vihar. PW 5 along with PW 7 went to the office of the Appellant and at about 4:00 P.M. when PW5 went inside the office room of Harish Kumar where co-accused Gurudev was also present, Harish Kumar asked PW5 that whether he had brought the money. PW5 replied that he had brought the money but the same was little less than the demanded money. PW5 gave money to the Appellant who kept it in his pocket. On this PW 7 gave the pre-appointed

signal and the other members of the CBI team rushed inside the office of the Appellant and caught hold of the Appellant and co-accused Gurdev Singh. On the trap officer challenging them, both the accused were perplexed PW 5 has stated that when PW 7 went outside to give the signal, he asked Appellant Harish Kumar to reduce the amount and on his request ₹100/- were returned. On the search being conducted ₹350/- were recovered from the Appellant and ₹50/- from the register and ₹100/- were recovered from PW 5. The right hand wash and the left hand wash and the pocket wash of the Appellant gave pink colour solution and were kept in two separate clean bottles on which paper slips were pasted and given the marking of LHW and RHW. The bottles were wrapped in cloth wrapper and sealed. The left hand wash of co-accused Gurudev Singh turned pink. After completing all the formalities, the Appellant and co-accused Gurdev Singh were arrested. Thereafter departmental proceedings were initiated against the Appellant wherein statements of the witnesses were recorded and as the witnesses did not support the prosecution case on material aspects in the departmental inquiry, the CBI filed a closure report on 31st August, 2001. Vide order dated 4th January, 2003, the learned Special Judge did not accept the closure report and directed further investigation of the matter. After further investigation, the CBI filed a charge-sheet against the Appellant and co-accused Gurdev Singh on 2nd

January, 2004. After recording of the prosecution witnesses, statements of the accused and defence witnesses, the learned trial Court acquitted the co-accused Gurudev Singh extending the benefit of doubt and convicted the Appellant as mentioned above resulting in filing of the present appeal.

3. Learned counsel for the Appellant contends that the prosecution witnesses have not supported the prosecution case on material aspects either in the disciplinary proceedings or in the trial and thus it is a case of no evidence against the Appellant. The learned Trial Court vide its order dated 21st November, 2007 in view of the statement of PW 5 made in his examination in chief, cross-examination and re-examination and further cross-examination being contradictory in nature directed holding of an enquiry against PW5 for giving false evidence before the court and issued notice under Section 340 Cr. P.C. to him. The enquiry proceeding under Section 340 Cr.P.C. was separated however till date no action has been taken thereon. Thus, the leaned trial court was also of the opinion that there are material contradictions in the testimony of PW 5 and thus no reliance should be placed on such a witness. The alleged motive has not been proved because as per the testimony of PW 5 and PW3 the connection had already been installed on 4th January, 1993 and thus, there was no reason for the Appellant to demand the bribe on the said date. The prosecution has also not proved the initial demand

because though PW5 in his examination in chief has stated that on 3rd January, 1993 the appellant came to his shop and demanded ₹ 500/- as bribe, however, in his cross-examination he has stated that bribe was demanded from his brother in law Arvind Kumar in whose name the PCO was being installed. Thus, the initial demand has also not been proved by the prosecution in the absence of examination of Arvind Kumar as a witness. Though, PW 5 in his examination in chief has stated that the Appellant asked if he had brought the money to which he said that he had brought and asked if his work would be done on which the Appellant stated that if the lineman is available it would be done that day otherwise it would be done definitely the next day. Thereafter, the Appellant asked him to pay the money. Further in his cross-examination, he has stated that when he went to the cabin of the Appellant and stated that he had brought the money demanded by him from Arvind Kumar, he refused to accept the money and told him that the PCO will be installed and he did not need the money and he would talk to Arvind Kumar at the shop. Even PW 7, the shadow witness in the departmental enquiry has stated that he did not exactly hear the amount of bribe and also the demand/acceptance of bribe nor seen the Appellant accepting of the bribe. The prosecution has also failed to prove the acceptance of bribe amount as PW 7 has stated that he did not hear or see anything between the two persons in the departmental enquiry and even

in the Court he has stated that PW5 replied that he had brought the money but the same was little less, therefore the demand of bribe amount be reduced. Since this witness did not hear anything so he could not have even heard the reduction of the bribe amount. Even PW5 has failed to prove the acceptance of money as he has stated that the Appellant refused to accept the money and told him that PCO will be installed and he did not need the money and he told the Appellant to take ₹ 500/- by saying this he put the money in his pocket. The prosecution has also failed to prove the recovery of money from the Appellant as PW 5 in his cross examination has stated that after the CBI officers came in, he went out of the cabin of the Appellant and he did not know what happened thereafter. The story of PW5 of giving the bribe amount is unbelievable. PW 6 Sh. Surender Kumar has stated that he took search of the person of the Appellant and from his pant pocket 3-4 G.C. notes of ₹100 each were recovered and then subsequently it is stated that he was asked to take search of the Appellant and he recovered ₹350/- from the left side pant pocket and further he has stated that the CBI officer took out the money from the Appellant. Even though PW 7 had stated that CBI team officials recovered bribe amount from the Appellant but he did not remember exactly from where the money was recovered. PW 5 in his cross examination has not supported the signing of the handing over memo, recovery memo and the

production memo Ex. PW 5/B, PW5/C and PW 5/D respectively. He stated that he cannot read English and he signed those documents on the directions of the CBI officials. Reliance is placed on *Sita Ram vs. State of Rajasthan*, AIR 1975 SC 1432, *Jaswant Singh v. State of Punjab*, AIR 1973 SC 707; *Banamali Samal v. State of Orissa*, AIR 1979 1414, *Gopal Krishan vs. State*, 1980 (18) DLT 11 (2) SN, *Som Nath vs. State*, 1990 (42) DLT 38 (SN), *Sunil Kumar Sharma v. State (CBI)*, 2007 139 DLT 407 to contend that mere recovery of money is not sufficient to raise presumption. Relying on *Bhagwan Singh vs. CBI*, 2010 (4) LRC 73 DEL it is contended that though recovery of money raises some doubt, but doubt itself cannot replace the proof. Relying on *Roshan Lal Saini vs. CBI* 2010 (4) LRC 138(DEL) it is contended that filing of complaint with CBI cannot be taken as substantive evidence of proof of allegations of demand of illegal gratification. It is thus prayed that the Appellant be acquitted of the charges framed.

4. Learned Standing Counsel for the CBI on the other hand contends that the prosecution has proved beyond reasonable doubt the initial demand at the time of trap, acceptance, recovery and motive. The initial demand is proved by the testimony of PW 5 which is corroborated by his complaint Ex. PW5/A and the testimony of PW6 and PW7 who have also corroborated the complaint Ex. PW5/A. The subsequent demand and the acceptance have been proved

by the testimony of PW5 Complainant, PW7 the shadow witnesses and the members of the trap team. The recovery is proved by the hand wash and the pocket wash of the Appellant and once the recovery is proved under Section 20 of the P.C. Act, this court is duty bound to raise presumption and the onus thereafter shifts on the Appellant to discharge the same and prove his innocence and thus the appeal be dismissed being devoid of any merit.

5. I have heard learned counsel for the parties and perused the records. While appreciating the evidence, it is the bounden duty of the Court to separate the grain from the chaff. It is well-settled that even if the witnesses have turned hostile, the part testimony of such witnesses which inspires confidence can be read in evidence. The entire evidence of hostile witnesses does not get effaced. Undoubtedly, in the present case, PW 5 the complainant has taken a turn-around on some points in his cross-examination, however in his re-examination he has again affirmed his statements made in the examination-in-chief. It would, thus, be relevant to reproduce the part of the cross-examination of the complainant:

I have given my statement in this matter before the Enquiry Officer in the departmental Enquiry against accused Harish Kumar. Copy of my statement signed by me (containing five pages) is Ex.PW5/DA. Harish Kumar had met my brother-in-law (Sala), who also sits at my shop. The accused Harish Kumar had demanded bribe from my brother in law Arvind Kumar initially. When I went to give the bribe money, the

accused Harish Kumar told me that my work will be done on that day and he would come to my shop to collect the money, I told Harish Kumar that since he had to take money, he should take there and then. It is correct that when I was giving him the money, he once told me that he will come to my shop but then he accepted the money.

It is correct that when I went to the cabin of accused Harish Kumar and told him that I had brought the money demanded by him from Arvind Kumar, he refused to accept the money and told me that PCO will be installed and he did not need the money, he will talk to Arvind Kumar at the shop. It is incorrect to suggest that I again tried to push the money in his pocket, he resisted and in the meanwhile, CBI persons came and caught hold of accused Harish Kumar. I do not remember if I had stated so in my statement before the Enquiry Officer. Confronted with portion A to A in statement Ex.PW5/DA where it is so recorded.

It is incorrect to suggest that infact the PCO instrument was installed and the line was also laid on the noon of the same day on which the CBI has raided Cabin of accused Harish Kumar i.e. 04.01.93. I did not state so before the Enquiry Officer. Confronted with portion B to B of statement Ex.PW5/DA where it is so recorded.

I do not remember if I had stated before the Enquiry Officer that one Gurdev Singh was sitting there but nothing was paid to Gurdev Singh in my presence and no money was returned to me. Confronted with portion C to C in statement Ex.PW5/DA where it is so recorded.

6. From a perusal of the above deposition of the complainant in the cross-examination the only thing which can be adduced is that the complainant was confronted with his statement made before the Enquiry Officer which he partly admitted and partly denied, however, in his re-examination he has reiterated his statement given in the examination-in-chief before the Court to

be correct & has affirmed the prosecution version. Another opportunity was granted to cross-examine the witness & nothing material could be elucidated from him. In his cross-examination this witness has denied that he tried to push the money in the pocket of the Appellant. Hon'ble Supreme Court in *Khujji alias Surendra Tiwari v. State of Madhya Pradesh, 1991 (3) SCC 627* has held that the evidence of a hostile witness cannot be treated as effaced or washed of the record altogether and the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof. This Court in *Inder Singh & Ors. Vs. State 61 (1996) DLT 566* has held that where cross-examination of the witness was conducted after a gap of almost one year it might be possible that the witness was won over by the defense. In the case at hand after the departmental enquiry, a closure report was filed by the investigating agency which was not accepted by the court. Subsequently the charge-sheet was filed. Only because PW5 has not supported the prosecution case on some points in his cross-examination, his entire testimony cannot be thrown away. Rather this witness was re-examined and there he reaffirmed the prosecution version. Also what has been stated by PW 5 in his cross-examination is only that he does not remember partly as to what he stated before the enquiry officer. The same does not amount to supporting the case

of the defence. The statement of the witness along with the shadow witness gives the entire sequence of events.

7. The contention of the learned counsel that there was no motive for the Appellant to have received the bribe amount since the PCO had already been installed by the time bribe amount was allegedly demanded and paid is meritless. The orders of installation of PCO were issued on the 10th September, 1992 and the connection was to be installed by the end of December. However, the same was not done. PW4 Sh. R.P. Gupta the then Junior Telecom Officer at Mayur Vihar Telephone Exchange, Phase-I has stated that on 4th January, 1993 before lunch he had prepared the store requisition slip Ex.PW4/A. In the cross-examination he has stated that after preparing the requisition slip Ex. PW4/A he gave the same to lineman Yogender Singh and thereafter the concerned JTO had to issue jumper letter for opening of the new connection and it was possible that the same day new connection could open. PW9 Yogender Singh has stated that on 4th January, 1993 he was working as lineman and he had installed the telephone connection at the address given in Ex. 6/C-1 which is a copy of receipt of jumper letter book having name & address of Arvind Kumar R/o 9/51 Durga Market, Kichripur, Delhi in the evening hours, that is, after the raid was conducted at 4:00 P.M. The testimony of PW 4 and PW 9 corroborates the

version of PW5 the Complainant who has in his cross-examination denied the suggestion that the connection had been installed and the line was also laid in the noon of the same day on which the CBI raid was conducted. Thus, when the money was accepted by the Appellant from PW5 the connection had not been installed and the procedural formalities thereof were being fulfilled.

8. As regards the previous version, PW5 in his testimony has stated that the Appellant had come to his shop at 9/51 at Durga Market, Khichripur on 3rd January, 1993 in the afternoon and the Appellant told him that his number had come and the telephone can be installed but he would have to pay him ₹ 500/- as bribe. This testimony of PW 5 is corroborated by the contemporaneous document. Ex.PW5/A the complaint given by PW5 to the SP, CBI wherein the factum of demand made by the Appellant on 3rd January, 1993 when he came to his shop is clearly mentioned. It is also mentioned that the money was to be paid on 4th January, 1993 at 4:00 P.M. Much emphasis has been laid by the learned counsel for the Appellant that in his cross-examination PW5 has stated that the demand on 3rd January, 1993 was made to the brother-in-law of the Petitioner and thus, no initial demand was made from the Petitioner. In cross-examination of PW5 it has been stated that the Appellant had demanded bribe from his brother-in-law Arvind Kumar initially. The cross-examination does not suggest that the demand made on 3rd January, 1993 which was

alleged in the complaint and deposed in the Court was not made to PW5. Moreover, this statement in the cross-examination of PW5 is not corroborated by any contemporaneous or independent evidence nor does this statement indicate that no demand was made to the Petitioner. Thus, this Court is inclined to rely upon the statement of PW 5 in his examination-in-chief wherein he has stated that the initial demand of ₹5,00/- was made to him at his shop by the Appellant when he came on the 3rd January, 1993.

9. Coming to the demand made by the Appellant at the time of trap. PW 5 has stated that he along with the CBI team and independent witnesses reached near the office of the Appellant at about 4:00 P.M. Thereafter, he and PW7 Jaganath went to the office of the Appellant situated at the first floor of the MTNL building. After reaching the first floor of the office of Appellant PW5, the complainant entered into the room while PW7 Jagannath stood on the gate of the room which was partly opened. When he entered the room, he found Appellant sitting on the chair and co-accused Gurdev was also sitting across the table. On his saying 'namaste' to the Appellant he asked him why he was late. On which the Complainant replied that his cycle had developed some snag and therefore he was late. Thereafter, the Appellant asked if he had brought any money; to which he replied that he had brought the money and asked if his work would be done today. Thereafter, Appellant Harish Kumar

stated if the lineman was available it will be done that day otherwise it will be definitely done the next day. Thereafter, the Appellant asked him to pay the money. On this he took the bribe money from his shirt pocket by his right hand and extended towards the Appellant who accepted/ received the money from his left hand and kept it in the left side of his pant after counting the same with both his hands. PW7 Jagannath who was standing at the gate of the room gave the signal to CBI team. On Jagannath giving the signal, the CBI team entered. Further, though, PW 5 in his cross-examination has stated that when he was giving the money, the Appellant once told him that he will come to his shop but he then accepted the money. PW5 in his cross-examination accepted the suggestion that when he went to the cabin of the Appellant and told him that he had brought the money demanded by him from Arvind Kumar, he refused to accept the money and told him that PCO will be installed and he did not need the money, he will talk to Arvind Kumar at the shop. Merely because this witness in his cross-examination has partly supported the case of the Appellant, the same would not wash off his testimony in the examination-in-chief. In his re-examination this witness has reiterated that the Appellant asked him if he had brought the money and he replied that he had brought the same and asked if his work would be done that day which was replied by the Appellant stating that if the lineman would be

available it would be done that day otherwise it would be done the next day. Thus, the prosecution has proved the demand made by the Appellant at the time of trap.

10. PW5 in his examination-in-chief has stated that on the Appellant asking him to pay the money he took the bribe amount from his shirt pocket by his right hand and extended towards the Appellant who accepted the same with his left hand and kept the same in his left side of his pant after counting the same with both his hands. During the said transaction witness PW7 Jagannath was standing on the gate of the room. While Jagannath was giving signal to CBI team he asked the Appellant to reduce the bribe amount on which the Appellant returned two notes of ₹ 50/- back to him and one note of ₹50/- out of the bribe amount was given by the accused to Gurdev Singh which he kept in a file cover on the table. In the meantime, CBI team arrived and two officers caught hold of the wrist of the Appellant. PW 7 informed D.M. Sharma what had transpired. PW 6 searched the pocket of the Appellant and ₹350/- were recovered from the left pocket of his pant. The numbers of the 7 G.C. Notes were compared. Inspector D.M. Sharma asked him about the three remaining notes on which PW 5 told him that the Appellant had returned those two notes on his request to reduce the amount and one note was given to the co-accused Gurdev Singh. The two hand washes and the pocket wash of

the Appellant turned pink which were kept in separate bottles and sealed. No cross-examination of this witness on the point of hand wash has not been done except putting him a suggestion that he did not note what was written on the handing over memo Ex.PW5/B, recovery memo Ex.PW5/C and production memo Ex.PW5/D. In his re-examination this witness has reiterated his version in his examination-in-chief. This testimony of PW 5 is duly corroborated by PW 7. Also PW 7 has not been cross-examined on this aspect and thus his testimony has gone unchallenged on this count.

11. PW 7 Jagannath who was the shadow witness and accompanying the Complainant PW5 has stated that when PW5 reached inside the room of the Appellant, he took position at the door of office room. The Appellant and Gurdev Singh were present inside the office room. He asked him as to how he had come here on which PW 5 replied that he came on a bicycle. The Appellant asked whether he had brought the money to which PW5 replied that he had brought the money but the same was little less therefore demand of bribe money be reduced. PW 5 gave the money to the Appellant who accepted the same and kept it in his pocket. On his indication, the CBI officers entered the office and conducted the raid. This witness has not been cross-examined on this aspect except a suggestion put to him that he had appeared in the departmental enquiry against the Appellant which PW 7

affirmed and stated that Ex.PW7/(D1) was his statement before the departmental enquiry. This witness has not been confronted with the relevant portions of his previous statement Ex PW7/D1. Hence, the testimony of PW 7 has gone unchallenged. Thus, the prosecution has proved beyond reasonable doubt the demand and acceptance of bribe made by the Appellant at the time of the trap.

12. I also find no merit in the contention of the learned counsel for the Petitioner that since these witnesses, particularly PW5 had appeared in the departmental enquiry and not supported the prosecution case, his testimony cannot be relied upon. The statement before any enquiry officer is only like a previous statement. The witness has been duly confronted and even in his cross-examination, during confrontation he has denied certain portions of the statements made during the enquiry.

13. Learned counsel has laid emphasis on the fact elicited from PW 5 during his cross-examination that on the apprehension, the Appellant was beaten by the CBI officers. It may be noted that the Appellant has not been able to substantiate this aspect from any other evidence on record like an application to the learned trial court immediately on production for remand or from any MLC.

14. In the present case, since acceptance and demand has been proved in terms of Section 7 of the POC Act, this Court is duty bound to raise presumption for offence under Section 20 of the POC Act. In *M. Narsinga Rao vs. State of Andhra Pradesh*, 2001 (1) SCC 691 it was held that where receipt of illegal gratification was proved, the Court was under a legal obligation to presume that such gratification was accepted as reward for doing a public duty. In the report, it was held:

“13. Before proceeding further, we may point out that the expressions "may presume" and "shall presume" are defined in Section 4 of the Evidence Act. The presumptions falling under the former category are compendiously known as "factual presumptions" or "discretionary presumptions" and those falling under the latter as "legal presumptions" or "compulsory presumptions". When the expression "shall be presumed" is employed in Section 20(1) of the Act it must have the same import of compulsion.

14. When the sub-section deals with legal presumption it is to be understood as in terrarium i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act.

15. The word "proof need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word "proved" in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in *Hawkins v. Powells Tillery Steam Coal Company, Ltd.* 1911 (1) K.B. 988 observed like this:

“Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion.”

16. The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business vis-a-viz the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act.

17. Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in Law of Evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the court

can draw an inference and that would remain until such inference is either disproved or dispelled.

18. For the purpose of reaching one conclusion the court can rely on a factual presumption. Unless the presumption is disproved or dispelled or rebutted, the court can treat the presumption as tantamounting to proof. However, as a caution of prudence we have to observe that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. This Court has indicated so in Suresh Budharmal Kalani v. State of Maharashtra 1998CriLJ4592 . "A presumption can be drawn only from facts - and not from other presumptions - by a process of probable and logical reasoning."

19. Illustration (a) to Section 114 of the Evidence Act says that the court may presume that "a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession." That illustration can profitably be used in the present context as well when prosecution brought reliable materials that appellant's pocket contained phenolphthalein smeared currency notes for Rs. 500/- when he was searched by PW-7 DSP of the Anti Corruption Bureau. That by itself may not or need not necessarily lead to a presumption that he accepted that amount from somebody else because there is a possibility of somebody else either stuffing those currency notes into his pocket or stealthily inserting the same therein. But the other circumstances which have been proved in this case and those preceding and succeeding the searching out of the tainted currency notes, are relevant and useful to help the court to draw a factual presumption that appellant had willingly received the currency notes."

15. Since the prosecution has proved beyond reasonable doubt the charge under Section 7 and 13(2) read with Section 13(1)(d) of the PC Act, the conviction and order of sentence of the Appellant is upheld for the said offences. The appeal is dismissed. The Appellant is on bail; his bail bond and

surety bond are cancelled. The Appellant be taken into custody to undergo the remaining sentence.

(MUKTA GUPTA)
JUDGE

May 19, 2011
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