

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

Judgment reserved on: February 14, 2011
Judgment delivered on: February 21, 2011

+ **CRIMINAL APPEAL NO.963/2008**

PREM RAJ MEENA

....APPELLANT

Through: Mr. K.T.S. Tulsi, Sr. Advocate with Mr. Raj
Kamal, Advocate

Versus

CENTRAL BUREAU OF INVESTIGATION RESPONDENT

Through: Ms. Sonia Mathur, Advocate

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. This appeal is preferred against the impugned judgment of learned Special Judge dated 25.10.2008 in CC No.3/2002 RC No.66(A)/2000 and the consequent order on sentence dated 31.10.2008 whereby the appellant Prem Raj Meena has been convicted for the offences punishable under Section 7 and 13(2) read with Section 13(1) (d) of Prevention of Corruption Act, 1988 and sentenced to undergo 1½ years RI and to pay fine of ₹2,000/-, in default of payment of fine to undergo SI for the period of 15 days for the offence

punishable under Section 7 of the P.C. Act. He has also been sentenced to undergo RI for the period of two years and to pay fine of ₹3,000/-, in default to undergo SI for the period of 30 days for the offence punishable under Section 13(2) read with 13(1)(d) of P.C. Act.

2. Briefly stated, relevant facts for the disposal of this appeal are that on 15.11.2000 complainant Puran Chand Nirala visited the CBI office and lodged a written complaint Ex.PW1/A claiming that he is a contractor of PWD Division IV. He was awarded one contract by PWD Division IV for whitewashing and painting of Flatted Factory Complex, Okhla in the month of January, 2000. The work was completed in March, 2000 and bill for ₹22,000/- in respect of said work was pending in the office of Executive Engineer PWD IV, Hauz Khas, New Delhi in October, 2000. In this connection the complainant had visited and met the appellant P.R. Meena several times but the bill was not cleared. On 15.11.2000, complainant again met the appellant to request for clearing of his bill and on this, the appellant demanded 5% of the bill amount i.e. ₹1,100/- as illegal gratification, failing which the appellant told that he wouldn't sign the cheque for the bill amount. On this complaint, formal FIR was registered and the investigation was entrusted to Inspector Om Prakash, CBI.

3. Inspector Om Prakash decided to lay a trap. He arranged a raiding party and joined two panch witnesses, namely, Surender Kumar Singh(PW3) and PW7 Shri Sri Niwas . The complaint was shown to the

panch witnesses, who satisfied themselves about the genuineness of complaint. The complainant produced ₹1,100/- in the form of 11 GC notes of ₹100/- denomination each. Numbers of those 100 GC notes were recorded in the handing over memo. Thereafter, the GC notes were treated with phenolphthalein powder and the live demonstration was given in the presence of the complainant and the panch witnesses that in the event of anyone coming in contact of the tainted GC notes his hand wash, if put in sodium carbonate solution, would turn pink. After the demonstration, tainted GC notes were put in the pocket of the shirt of the complainant and he was directed to hand over the same to the appellant only in the event of his specific demand or by any other persons on the direction of the appellant. Shri Surender Kumar, panch witness was directed to act as a shadow witness and try to hear the conversation between the appellant and the complainant and also to see the transaction. He was directed that in the event of passing of tainted money to the appellant, he should give signal to the trap party by scratching his head. Pre-trap proceedings were recorded in the handing over memo. Thereafter the trap team left for the office of Executive Engineer, PWD Division IV.

4. On reaching the office of Executive Engineer, complainant and shadow witnesses Surender Kumar were directed to go to the office of the appellant P.R. Meena and the members of the trap team took suitable positions near the office of the appellant. At about 3:30 pm, the panch witnesses gave pre-arranged signal and on this, the trap

team rushed into the room of the appellant who was apprehended from his left hand and right hand wrists respectively by Inspector V.K. Dhir and Inspector Thakran. Appellant was challenged by the IO that he demanded and accepted ₹1,100/- from the complainant and on this the appellant got perplexed.

5. It is further the case of the prosecution that the complainant and shadow witness informed that on entering the chamber of the appellant, the complainant asked him about his pending bill and on this the appellant directed the shadow witness to wait outside the office. Thereafter, the shadow witness went into the adjacent room from where he could see and hear the conversation between the complainant and the appellant through partition made glass with grill. The complainant told the Investigating Officer that Meena had asked him whether he had brought the money and when he confirmed that he has brought the money ₹1,100/-, the appellant demanded money from him and on this complainant handed over the tainted money to the appellant who took it in his right hand and kept the money in his brief case without counting. One brief case was lying in the office of the appellant and on checking ₹1100/- were recovered from the said brief case which were found in contact with one blank envelop.

6. Sodium carbonate solution was prepared in water and the appellant was directed to put his right hand fingers in the said solution. On appellant putting his fingers in the colourless sodium carbonate

solution, it turned pink. Said handwash was transferred into a clean bottle and sealed with the seal of IO. Thereafter, the wash of the blank envelop in colourless sodium carbonate solution was taken which also turned pink. This envelop wash was transferred into a clean empty bottle and sealed. Tainted money, envelop and the both handwashes were taken into possession. All the trap proceedings were incorporated in the recovery memo. On completion of formalities of investigation, sanction for prosecution was obtained and the appellant was challaned and sent for trial.

7. Learned Special Judge, on consideration of the charge sheet, charged the appellant for the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the P.C. Act. The appellant pleaded not guilty to the charge and claimed trial.

8. In order to bring home the guilt of the appellant, prosecution has examined 10 witnesses in all, including the complainant and two panch witnesses, namely, Puran Chand Nirala (PW1), Surender Kumar Singh (PW3) and Sri Niwas (PW7).

9. The appellant when examined under Section 313 Cr.P.C. denied having demanded or accepted illegal gratification from the complainant and claimed himself to be innocent. In defence, the appellant examined four witnesses, namely, DW1 Shri R.C. Gupta, UDC, DW2 Shri Hiroo Kanuga, Assistant Engineer(Civil), CPWD, DW3 Shri

D.D. Bunker, Assistant Engineer, CPWD and DW4 Shri Kailash Singh, Peon, PWD Division IV.

10. The learned trial Judge on consideration of evidence produced by both the parties, found the appellant guilty of having demanded and accepted illegal gratification of ₹1,100/- from the complainant and convicted and sentenced him on charges under Section 7 and 13(2) read with 13(1)(d) of the P.C. Act, 1988.

11. Learned Shri K.T.S. Tulsi, Sr. Advocate appearing for the appellant contended that the impugned judgment is untenable in law for the reason that the prosecution has failed to prove either the demand or acceptance of illegal gratification by the appellant, which are the essential ingredients of the offence under Section 7 as well as Section 13(2) read with 13(1)(d) of P.C. Act. Dilating on the argument, learned Senior Counsel for the appellant submitted that the case of the prosecution is essentially based upon the testimony of the complainant Puran Chand Nirala (PW1), shadow witness Surender Kumar Singh (PW3) and panch witness Sri Niwas (PW7), who are hostile witnesses and they have not supported the case of prosecution either on demand or acceptance of tainted money by the appellant. Learned Senior Counsel argued that even as per the case of the prosecution, the recovery was effected from a brief case lying on side of the table and according to the complainant while the appellant was talking with someone on telephone, he on his own without any instruction from the

appellant had put the tainted money in the said brief case. Therefore, in view of this evidence, even the recovery of the tainted money from the possession of the appellant is not established. Thus, learned Senior Counsel has summed up that no case under section 7 or 13(2) read with 13(1)(d) of the P.C. Act is made out against the appellant and he is entitled to acquittal. In support of his contention, learned Senior Counsel has referred to the judgment of Supreme Court in the matter of **A. Subair Vs. State of Kerala**, (2009) 6 SCC 587.

12. Learned Ms. Sonia Mathur, Advocate appearing on behalf of the respondent CBI has argued in support of the impugned judgment. She contended that merely for the reason that the complainant as well as panch witnesses have failed to support the case of the prosecution for the reasons best known to them, prosecution case cannot be thrown away. She submitted that law relating to appreciation of testimony of hostile witnesses is well settled and the court while dealing with the testimony of hostile witness can rely upon that part of the testimony which appears to be truthful. Expanding on the argument, learned prosecutor submitted that although PW1 Puran Chand Nirala is a hostile witness, he in his examination-in-chief has categorically stated that he himself had gone to the CBI office where he submitted written complaint Ex.PW1/A against the appellant. She also stated that the complaint is in his hand writing and its contents are correct. Learned prosecutor submitted that on perusal of Ex.PW1/A, it would be seen that in the complaint, there is a specific allegation that the appellant

Meena had demanded 5% of bill amount i.e. ₹1,100/- as bribe from him. Learned prosecutor also referred to the recovery-cum-seizure memo Ex.PW1/D, which according to the IO was prepared at the spot and contended that in this recovery memo, there is a specific mention that at the time of raid, the appellant in his office had demanded and accepted the bribe amount of ₹1,100/- from the complainant, which amount he accepted in his right hand and put the same in the brief case without counting. This memo is admittedly signed by the complainant as well as the panch witnesses. Therefore, it is obvious that contents of the memo are correct and witnesses, because of some extraneous reasons, have turned hostile in the court. Learned counsel further argued that even the recovery of tainted money from the brief case of the appellant is established from the testimony of the complainant, panch witnesses as well as the Investigating Officer. In view of the above, learned prosecutor has contended that the learned trial court has rightly relied upon the testimony of the Investigating Officer and reliable part of the testimony of the complainant and panch witnesses to find the appellant guilty of the offences.

13. Before adverting to the facts of this case, it would be useful to have a look upon the relevant law. The appellant has been charged for the offences under Section 7 and 13(2) read with 13(1(d) of the P.C. Act, 1988, which are reproduced thus:

“7. Public servant taking gratification other than legal remuneration in respect of an official act:

Public servant taking gratification other than legal remuneration in respect of an official Act.- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine. Explanations.-- (a)" Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will when serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) " Gratification." The word ' gratification' is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) " Legal remuneration." The words " legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) " A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section".

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“13. Criminal misconduct by a public servant.

(1) A public servant is said to commit the offence of criminal misconduct, -

(d) If he, -

- (i) By corrupt or illegal means, obtains for himself or for any other person any valuable thing or Pecuniary advantage; or
- (ii) By abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (iii) While holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;”

14. On bare reading of the above provisions, it is clear that in order to bring home the charge under Section 7 of the P.C. Act, the prosecution was required to prove that the appellant either accepted, obtained or attempted to attain illegal gratification from the complainant and in order to establish the guilt of the appellant under Section 13(2) read with 13(1)(d) of the P.C. Act also, the prosecution was required to establish that the appellant, by corrupt or illegal means or by abusing his official position, obtained advantage or a valuable thing for himself or any other person. Thus, it is obvious that two essential components to be proved for bringing home the charge under Section 7 and 13(2) read with 13(1)(d) of the P.C. Act are the demand and acceptance of bribe. In my aforesaid view, I find support from the judgment of the Supreme Court in the matter of **A. Subair Vs. State of Kerala (supra)**.

15. Now the crucial question which needs determination in this appeal is whether or not the prosecution has been able to establish either the demand or acceptance of illegal gratification by the appellant? The material witnesses to prove demand and acceptance

are PW1 Puran Chand Nirala (complainant) and PW3 Surender Kumar Singh, shadow witness. Both of them have turned hostile and they have not supported the prosecution story regarding demand or acceptance of bribe by the appellant at the time of trap proceedings. PW1 Puran Chand Nirala (complainant) has stated that on reaching the office of the appellant along with the trap team, he along with PW3 Surender Kumar Singh went to the office of the appellant P.R. Meena, but Surender Kumar Singh was not allowed to enter the office. He also stated that P.R. Meena was busy on telephone and he gestured him to sit. Thereafter, he kept the amount of ₹1,100/- in the brief case of P.R. Meena lying by the side of his chair. After that, he came out of the room and gave signal to the trap team. He also stated that before coming out of the room, he shook hand with the appellant. In the cross-examination, he denied the suggestion of learned APP that the appellant himself kept the money in the brief case after accepting bribe from him. He also denied the suggestion that the appellant P.R. Meena asked him as to how much money he has brought to which he answered that he had brought ₹1,100/- and thereafter on his demand, he handed over the tainted money to the appellant who accepted it and kept it in his brief case. PW3 Surender Kumar Singh in his examination-in-chief stated that at the time of the transaction, he was in the adjacent room with a dark glass partition through which he could see the shadows of the persons sitting in the room of the appellant. He stated that the contractor Puran Chand Nirala after having some talks

with the appellant came out of the room after shaking hands with him and he gave signal to the trap team. In the cross-examination, this witness denied that from his position in the adjacent room, he could hear the conversation between the complainant and the appellant or see the transaction also. He denied the suggestion that he heard the appellant asking the complainant whether he has brought the money and the complainant responded by asking that he had brought ₹1,100/- as demanded. Thereafter, the appellant extended his right hand with which he accepted the tainted money and kept it in his brief case. The aforesaid testimony of PW1 and PW3, in my view, is grossly insufficient to prove either the demand of illegal gratification or acceptance of the same. As regards the testimony of the Investigating Officer, admittedly he was not present at the time of transaction. Therefore, his testimony is of no help to the CBI for the reason that he had reached at the spot only after the completion of transaction. The money admittedly was recovered from the brief case and according to the complainant, he had kept that money in the brief case without any demand from the appellant. Thus, it cannot be said with conviction that the money reached in the brief case at the instance of the appellant, as such it cannot be said that the appellant obtained or accepted the tainted money from the complainant.

16. Learned counsel for the CBI has contended that, in any case, PW1 Puran Chand Nirala has stated in his testimony that he himself had gone to the CBI office to lodge the complaint and the complaint

Ex.PW1/A was written in his hand. He has also stated that the contents of the complaint are correct. From this, learned prosecutor has urged this court to infer that prosecution has been able to establish the initial demand.

17. I am not impressed with the argument for the reason that according to PW1 Puran Chand Nirala, his bill was pending clearance in the office of PWD. On the relevant day, he had approached the appellant for settling his bill and in the PWD office he met one person from the department, who advised him to pay commission to the appellant and only thereafter the bill would be settled. Therefore, on the next day, he went to the CBI office and lodged the complaint. If this version is true, then initial demand was not made by the appellant, but the complainant was advised by someone else to pay commission to the appellant. Therefore, it is not surprising that in his complaint Ex.PW1/A, the complainant had made allegation of initial demand against the appellant. It is pertinent to note that in the examination-in-chief, Puran Chand Nirala(PW1) has also stated that he had written the complaint in the CBI office on the advice and asking of CBI officials. Therefore, slight distortion of facts to make specific allegation against the appellant is a unique possibility. Otherwise also, complaint Ex.PW1/A is the FIR which set the investigating machinery into motion. It is well settled that the FIR is not a substantive piece of evidence and it can only be used for corroborating or contradicting the testimony of its makers. Therefore, in absence of substantive evidence of demand

or acceptance of bribe by the appellant, the contents of the FIR cannot be substituted as proof for demand and acceptance of illegal gratification. In my aforesaid view I find support from the judgments of the Supreme Court in the matter of **Baldev Singh Vs. State of Punjab**, (1990) 4 SCC 692 and State of **Gujarat Vs. Anirudh Singh** (1997) 6 SCC 514.

18. Learned prosecutor further submitted that from the testimony of complainant Puran Chand Nirala(PW1), PW3 Surender Kumar Singh and the IO PW8 Inspector Om Prakash, it is established that the tainted money was recovered from the brief case lying in the office of the appellant. Learned prosecutor contended since the brief case was lying in exclusive office of the appellant, it can be safely inferred that it belonged to him. Thus, recovery of the tainted money from the brief case of the appellant is sufficient proof of acceptance and demand of tainted money by the appellant.

19. I am not impressed with the argument of learned prosecutor. Complainant Puran Chand Nirala in his examination-in-chief has stated that when he entered the office of the appellant, he was busy on telephone. The appellant gestured him to sit. There was a brief case lying on a chair and he put the tainted money in the brief case. In the cross-examination by learned APP, he denied the suggestion that the appellant demanded and accepted the illegal gratification from him. Above version of the complainant leads to the conclusion that tainted

money was put in the brief case by the complainant of his own and not at the instance of the appellant. Thus, it cannot be said that the appellant was in conscious possession of the tainted money recovered from the brief case. Therefore, aforesaid recovery of tainted money cannot be taken as a proof for acceptance of tainted money by the appellant.

20. Lastly, it is argued by learned prosecutor that it has come in evidence that after apprehending the appellant, sodium carbonate solution in water was prepared and the appellant was made to dip his right hand fingers in the said solution and his hand wash turned pink. From this, it is apparent that the appellant had handled tainted money, resulting in presence of phenolphthalein on his fingers. This circumstance, according to learned prosecutor conclusively establishes the acceptance of illegal gratification by the appellant.

21. I do not find any merit in this contention for the reason that complainant Puran Chand Nirala in his testimony has stated that before leaving the office of the appellant, he shook hands with the appellant. PW3 Surender Kumar Singh has also deposed to this effect. According to PW1, he took out tainted money from his pocket and placed it in the brief case, meaning thereby that in place of P.R. Meena, he had handled the phenolphthalein treated currency notes. Therefore, a possibility cannot be ruled out that when he shook hands with the appellant, some of the phenolphthalein which had stuck to his fingers

got transferred to the fingers of the appellant and this explains as to why the hand wash of the appellant turned pink. Thus, under the circumstances, it is not safe to conclude acceptance of the tainted money by the appellant only on the strength of his hand wash turning pink.

22. The result of above discussion is that the prosecution has not been able to establish beyond doubt either the demand or acceptance of illegal gratification by the appellant. Thus, I find it difficult to sustain conviction of the appellant under Section 7 and 13(2) read with 13(1)(d) of P.C. Act, 1988 and the consequent order on sentence.

23. Appeal is accordingly accepted. Impugned judgment of conviction and the order on sentence are set aside and the appellant is acquitted of charge giving him benefit of doubt.

(AJIT BHARIHOKE)
JUDGE

FEBRUARY 21, 2011
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