

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

+ **CRL.A. 577/2002**

% Reserved on: 15<sup>th</sup> January, 2013  
Decided on: 3<sup>rd</sup> May, 2013

S.K.SINGHAL ..... Appellant

Through: Mr. Bhupesh Narula, Advocate.

versus

STATE (C.B.I.) ..... Respondent

Through: Mr. R.V. Sinha, Standing Counsel for  
CBI with Ms. Sangita Rai, Advocate.

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

1. By the present appeal the Appellant challenges the judgment dated 25<sup>th</sup> July, 2002 convicting the Appellant for offences under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (in short 'the PC Act') and the order on sentence dated 26<sup>th</sup> July, 2002 directing him to undergo Rigorous Imprisonment for a period of four years and a fine of Rs. 500/- each under Sections 7 and 13 (2) of the PC Act and in default of payment of fine to further undergo Rigorous Imprisonment for three months on each count.

2. Learned counsel for the Appellant contends that the prosecution has failed to prove the motive as the transfer order was issued under the orders of the President of India and the Appellant had no role to play therein. He could not have stopped the Complainant from joining the Post and Telegraph Department. Two traps were laid, first on 27<sup>th</sup> June, 1994 wherein admittedly no demand was made by the Appellant and second on 28<sup>th</sup> June, 1994 wherein also neither the demand nor the acceptance nor recovery has been

proved. The alleged audio cassette prepared in the evening of 27<sup>th</sup> June, 1994 is of no relevance as the same was not sent for the auditory comparison of the Appellant by the expert. The telephone number on which the said audio cassette was prepared was not proved to be of the Appellant. The alleged tape recorded conversation was sealed on 27<sup>th</sup> June, 1994 however, the same was unauthorisedly reopened on 16<sup>th</sup> September, 1994 for the alleged transcription when no public witness was present and thus the chances of tempering in the recording in the audio cassette cannot be ruled out. There is no evidence on record to show as to what happened to Rs. 500/- given by the Complainant treated for trap on 27<sup>th</sup> June, 1994. There is material improvement in the examination-in-chief of the Complainant from the statement recorded as the words 'paise dijiye' were not recorded in Ex. PW1/D1. The Complainant in his examination-in-chief states that Inspector Tokas searched the Appellant and recovered Rs. 1,800/- tainted GC notes from the pant of the Appellant whereas in his cross-examination he says that PW3 P.D. Chamoli recovered the money. No search of the officers was offered before the alleged recovery. Further the Complainant states that he did not know who put the hand in the internal lining of the pant of the Appellant. Though it is stated that PW3 P.D. Chamoli signed the internal lining of the pocket of the pant but when the pant was produced in the Court signatures of PW3 were not there and only signatures of Shri B.K. Sinha PW4, the independent witness were present. Further PW1 states that contents of P54 and P55 were not pink. PW3 P.D. Chamoli and PW4 B.K. Sinha are stock witnesses as they have appeared in another trap case. The Appellant has placed on record Ex. TX to prove the same and no reliance can be placed on their testimony as witnesses. There is non-application of mind

in passing the sanction order as the entire evidence was not placed before the sanctioning authority as stated by DW1 R.K. Singh. PW5 Bhom Prakash Sharma, public witness has not supported the prosecution case. PW7 Inspector Tokas stated that all the proceedings were carried out by Inspector Ved Prakash however, Inspector Ved Prakash was not examined as witness. Thus the Appellant be acquitted of the charges framed.

3. Learned counsel for the CBI on the other hand contends that the demand, recovery and acceptance of money by the Appellant have been proved on record. The judgment of the learned Trial Court is a speaking order. The sanction has been properly granted and in view of Section 20 of the PC Act presumption is raised against the Appellant which he has failed to discharge in his statement under Section 313 Cr.P.C. Hence the appeal be dismissed.

4. I have heard learned counsel for the parties and perused the records.

5. The prosecution case in brief is that the Complainant PW1 Dr. Ashok Kumar, was working as Regional Director in the Office of Ministry of Health and Family Welfare, Government of India, Bhopal and an office order was issued on 17<sup>th</sup> June, 1994 posting him as Chief Medical Officer in the Department of Post and Telegraph at Bhopal. As per the complaint, after receipt of the posting orders on 24<sup>th</sup> June, 1994 PW1 tried to contact Dr. Basu, Deputy Director General (Medical) on phone from Bhopal regarding the relieving order of Dr. R.S. Sisodia, CMO who was to be replaced by the Complainant however, he could not talk to Dr. Basu and spoke to a person who introduced himself as S.K. Singhal, Section Officer, the Appellant herein. The Complainant alleged that the Appellant asked him to come to Delhi to settle "Len Den" if he wanted to join P & T Department. On the

Complainant asking him the amount the Appellant stated that the same would be informed only on meeting in Delhi and asked the Complainant to contact him at his residence before 9.00 a.m. on 27<sup>th</sup> June, 1994. Due to the delayed arrival of the train at Delhi, the Complainant could not contact the Appellant at his residence in time and thus spoke to him on phone, when he was asked to come at the reception counter at Dak Bhawan. The Complainant went to the CBI office to lodge a complaint and stated that he could only arrange Rs. 500/- as he was not aware about the actual demand of the Appellant and he was not willing to pay the bribe. Thus necessary preparations for the trap were made with Inspector Tokas PW7 as recovery officer and two independent witnesses namely Shri P.D. Chamoli, PW3 and Shri B.K. Sinha, PW4. The currency notes were treated with phenolphthalein powder and their numbers were duly noted. Shri B.K. Sinha, PW4 was deputed as shadow witness to see the transaction and overhear the conversation. On the raid party reaching Dak Bhawan, the Complainant along with the shadow witness went to meet the accused who immediately came down at the reception hall. The Complainant tried to elicit from the accused as to how much money he was demanding however, the Appellant avoided coming out openly but later asked the Complainant as to how much was in his mind on which the Complainant stated that he had Rs. 500/- only. The Appellant refused to accept the said amount stating that the work requires around Rs. 20,000/- however, the minimum would be Rs. 10,000/- and the work of the Complainant could be done as soon as he comes with the said amount. Thus no acceptance of money took place on 27<sup>th</sup> June, 1994.

6. At 7.30 p.m. on the same date, a telephone call was made to the residence of the Appellant on Telephone No. 7132914 from the CBI office which was tape recorded in a cassette Ex. P1 in the presence of the witnesses after checking the cassette. In the conversation the Complainant allegedly told the Appellant that he had thought over the matter and he was willing to pay Rs. 10,000/- but he was unable to arrange more than Rs. 5,000/- immediately. The Appellant showed his readiness to accept Rs. 5,000/- and to expedite the matter, he asked the Complainant to come and meet him in the office after 2.00 p.m. on the next date. Thus again a trap was laid on 28<sup>th</sup> June, 1994. The Complainant arranged Rs. 1,800/- in the form of 32 currency notes of Rs. 50 each Ex. P2 to P33 and 20 currency notes of Rs. 10 each Ex. P34 to P53. The currency notes were treated with phenolphthalein powder and their numbers were noted down. Again Shri B.K. Sinha, PW4 acted as shadow witness and the team reached Dak Bhawan after leaving the CBI office at 2.45 p.m. From the reception again the Complainant and the shadow witness contacted the Appellant, who came down from the stairs and took them to juice shop outside the building. After taking juice, the three of them started moving and in the course of the walk, it is alleged by the Complainant that the Appellant demanded money, when the trap money was handed over representing the said amount to be Rs. 5,000/-. The Appellant received the same from his left hand and put the said money in the left side pocket of his trousers. On the shadow witness giving the signal, the Appellant was apprehended and the tainted money was recovered from the left side pocket of his trousers. The hand wash and the left side pocket wash of the trousers were taken which turned pink and the two washes were put in bottle and sealed after preparing the pullanda. The requisite documents were

seized from the concerned officer and after recording the statements of the necessary witnesses and obtaining the sanction, charge sheet was filed.

7. Learned counsel for the Appellant has laid a lot of stress on the sanction order. I have gone through the statement of Shri K. Diash, Chief Post Master General also numbered as PW1 who has authenticated the sanction order passed by the Minister of State for Communication on behalf of the President of India. A perusal of sanction order shows that it has considered the facts in detail. The non mentioning of the details of the documents received from the CBI will not invalidate the sanction order passed by the competent authority. It is incumbent on the prosecution to prove that a valid sanction is granted by the sanctioning authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction or (2) by adducing evidence aliunde to show the facts placed before the sanctioning authority and the satisfaction arrived at by it. (See *Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh AIR 1979 SC 677*). In the present case the sanction order duly authenticated by PW1 is a detailed order showing the facts considered. Hence it cannot be stated to be an order suffering from non-application of mind.

8. As regards the demand of the Appellant on 27<sup>th</sup> June, 1994 is concerned, it may be noted that PW1 in his testimony has stated that on 27<sup>th</sup> June, 1994 when he went with the shadow witness who was introduced as his cousin, the following conversation took place between the Appellant and the Complainant.

“From the reception counter, I rang up Mr. Singhal. He immediately came down stairs, and enquired from the clerk at counter “who is Dr. Nigam”. On hearing this, I introduced myself. Aforesaid Shri S.K. Singhal is the accused present in the court. (Correctly identified). Thereafter, accused S.K. Singhal, took me to nearby Coffee House. PW Sinha also accompanied us. At the Coffee House I asked “Boliye Singhal Saheb kaya mamla hai”. Singhal replied “Aap to jante ho ki postal depts. Mein paise ke bina kaam nahin hota. Samajdar ho”. I replied “phir bhi kuch to batao”. “Sankoch mat kariye, ye mera cousin hai”. S.K. Singhal said “aap kaya doge”. I told “mere pass abhi paanch so rupee hai”. On this S.K. Singhal replied “paanch so rupaye main chaprasi ko rooj deta hoon, paanch so rupaye se kaya hota”. Then I asked “kitna chahiye boliye na”. On this accused said “vaise to main Bees Hazar me kaam karta ho, aap anche aadmi ho dus hazar looga”. I said “Das hazaar to nahin de sakta abhi paanch so rupaye rakho baaki ka intazam karta hoon”. Accused did not accept Rs. 500/- and he came back. Bill of coffee house was paid by PW Shri Sinha.”

9. A perusal of cross-examination of PW1 the Complainant shows that the entire stress is on the trap on 28<sup>th</sup> June, 1994 and he has not been cross-examined to this extent. Thus, the testimony of PW1 qua demand on 27<sup>th</sup> June, 1994 has gone unchallenged. This version of PW1, the Complainant is supported by the statement of PW4, the shadow witness who has also not been cross-examined on this count. Thus the initial demand stands proved.

10. Learned counsel for the Appellant has challenged the tape recorded conversation on the ground that the telephone number of the Appellant was incorrect and it has not been proved in accordance with law. Though PW1 has identified the voice however he is not a person acquainted with the voice of the Appellant. Further, the voice sample of the Appellant had not been taken and sent for analysis or voice spectography. Thus there is no opinion

of the expert on record that the voice in the tape recorded conversation is of the Appellant. Further PW4 Shri B.K. Sinha stated that the transcription was not prepared in his presence. In the absence of either a witness who is acquainted with voice and thus identifies the voice of the Appellant or the expert opinion, the transcript could not be used in evidence.

11. As regards the raid conducted on 28<sup>th</sup> June, 1994 it is the case of the Appellant that on that date no demand was made by the Appellant hence in the absence of demand at the time of acceptance, the Appellant cannot be convicted for the offence charged. PW1 in his testimony has stated that after taking the juice, when the three of them proceeded from the juice counter, the Appellant demanded the money by saying ‘paise dijiye’ where after the Complainant took out the GC notes and passed on to the Appellant. However, PW1 has been confronted with his statement Ex. PW1/DA wherein this fact has not been recorded hence the statement regarding demand on 28<sup>th</sup> June, 1994 is a material improvement. Further PW4 the shadow witness in his examination-in-chief stated that after taking juice the Appellant and the Complainant moved away and then the Appellant demanded the money. This witness has also not stated the exact words stated by the Appellant regarding the demand at the time of acceptance. Learned counsel for the Appellant has laid emphasis on *Subash Parbat Sonvane vs. State of Gujarat, 2002 (4) Scale 40* to contend that the demand at the time of trap is an essential ingredient. In *Subash Parbat Sonvane* (supra) the three judges bench of the Hon’ble Supreme Court while dealing with Section 13 (1) (d) held that in Section 7 and 13 (1) (a) and (b) of the PC Act the legislature has used the word ‘accepts’ or obtains’, whereas in Section 13 (1) (d) the word ‘accept’ has been omitted and the word ‘obtain’

has been used. It is thus apparent that the prosecution has to prove the inducement to acceptance. It was held:

“6. In Section 7 and 13(1)(a) and (b) of the Act the Legislature has specifically used the words 'accepts' or 'obtains'. As against this there is departure in the language used in Clause (1)(d) of Section 13 and it has omitted the word 'accepts' and has emphasized the word 'obtains'. Further, the ingredient of Sub-clause (i) is that by corrupt or illegal means, a public servant obtains any valuable thing or pecuniary advantage; under Clause (ii), he obtains such thing by abusing his position as public servant and Sub-clause (iii) contemplates that while holding office as the public servant he obtains for any person any valuable thing or pecuniary advantage without any public interest. Therefore, for convicting the person under Section 13(1)(d), there must be evidence on record that accused 'obtained' for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing of pecuniary advantage without any public interest.

7. This Court interpreted similar provisions under the Prevention of Corruption Act, 1947 in *Ram Krishan and Anr. v. The State of Delhi* [(1956) SCR 183]. In the said case, the Court dealt with similar Clause (d) of Sub-section 1 of Section 5 and held that there must be proof that the public servant adopted corrupt or illegal means and thereby obtained for himself or for any other person any valuable thing or pecuniary advantage. The Court observed --

"....In one sense, this is no doubt true but it does not follow that there is no overlapping of offences. We have primarily to look at the language employed and give effect to it. One class of cases might arise when corrupt or illegal means are adopted or perused by the public servant to gain for himself a pecuniary advantage. The word "obtains", on which much stress was laid does not eliminate the idea of acceptance of what is given or

offered to be given, though it connotes also an element of effort on the part of the receiver. One may accept money that is offered or solicit payment of a bribe or extort the bribe by threat or coercion; in each case he obtains a pecuniary advantage by abusing his position as a public servant..."

The Court further observed that--

"...It is enough if by abusing his position as a public servant a man obtains for himself any pecuniary advantage, entirely irrespective of motive or reward for showing favour or disfavour..."

8. Similarly, in *M.W. Mohiuddin v. State of Maharashtra* [1995] 2 SCR 864 the Court dealt with Section 13(1)(d)(i) and (ii) and after referring to the decision quoted above as well as dictionary meaning of word "obtains" observed -- whether there was an acceptance of what is given as a bribe and whether there was an effort on the part of the receiver to obtain the pecuniary advantage by way of acceptance of the bribe depends on the facts and circumstances of each case. In that case, the Court held that it was proved that accused made a demand and also got the affirmation from the complainant that he had brought the demanded money and at his instance, the complainant wrapped the money in the handkerchief given by the accused and placed the same on the bag which was brought by the accused and as asked by him, these steps have been taken into consideration in arriving at the conclusion that the accused had in fact "obtained" the pecuniary advantage, namely, that he received the illegal gratification. Therefore, the Court upheld the conviction under Section 13(1)(d). Lastly, in *C.K. Damodaran Nair v. Govt. of India* 1997 CriLJ 739, this Court considered the word "obtain" used in Section 5(1)(d) and held as under -

"12. The position will however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the Act is concerned. For such an offence, prosecution has to prove that the accused "obtained" the valuable thing or pecuniary

advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the Act as it is available only in respect of offences under Section 5(1)(a) and (b) -- and not under Section 5(1)(c), (d) or (e) of the Act. "Obtain" means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the Act unlike an offence under Section 161 IPC, which as noticed above can be, established by proof of either "acceptance" or "obtainment".

9. Same is the position of statutory presumption under Section 20 of the Act and is available for the offence punishable under Section 7 or Section 11 or Clause (a) or Clause (b) of Sub-section (1) of Section 13 and not for Clause (d) of Sub-section 13."

12. Having proved the initial demand it has to be examined whether "obtainment" has been proved. Thus it will have to be proved beyond reasonable doubt that there was acceptance of the bribe amount. One way to prove acceptance is to prove recovery whereafter the onus shifts on the accused to disprove the willful acceptance and to prove that the money was thrust on him. As per the evidence of the witnesses, the PW3 P.D. Chamoli allegedly signed the internal lining of the pant however, when the same was produced in the Court the signature of PW3 Shri P.D. Chamoli was not there and signature of Shri B.K. Sinha PW4 only was present. Further there is no evidence on record to show who recovered the money from the Appellant. PW7 Inspector Tokas stated that the money was recovered by Inspector Ved Prakash who has not been examined. PW1 the Complainant stated that on 28<sup>th</sup> June, 1994 the bribe amount was recovered by Inspector Tokas PW9

from the pocket of the Appellant, however in the cross-examination on the next day he stated the same was recovered by PW3 P.D. Chamoli. Further PW4 B.K. Sinha stated that PW3 P.D. Chamoli recovered the money though in addition he stated that some money had fallen on the ground. Thus, there is inconsistency in the testimony of the witnesses as to who recovered the tainted money from the Appellant and whether from the Appellant or the ground. There is further inconsistency in the testimonies of PW1 and PW4 with regard to the number of GC notes.

13. There are inconsistencies in the testimony regarding the hand wash also after the trap on 28<sup>th</sup> June, 1994. PW4 states that hand wash was taken by PW7 whereas PW7 Inspector R.S. Tokas says that the hand wash was taken by Inspector Ved Prakash who has not been examined as a witness. Further the defence has placed on record the judgment in Case No. 29/94 Mohan Pal vs. CBI where PW3 and PW4 were panch witnesses and wherein they have been disbelieved and discredited. Moreover in the entire prosecution case it is not clear as to who arranged Rs. 1,800/- which were used for laying the trap on 28<sup>th</sup> June, 1994. The evidence of the prosecution is also silent as to what happened to Rs. 500/- which were treated for raid on 27<sup>th</sup> June, 1994. Even the link evidence has not been proved by the prosecution. Though memo Ex.PW1 says that labels of bottles of hand wash were signed however Ex.PW2/A the CFSL report does not say so. The signed cloth wrappers were not available. Further there is inconsistency in the numbers of the tainted G.C. notes.

14. In view of the fact that there are inconsistencies regarding the recovery of money and link evidence has not been proved it cannot be said that the prosecution has proved acceptance and recovery beyond reasonable

doubt whereafter the onus would have shifted on the Appellant to prove that the acceptance was not by way of illegal gratification. The Appellant is thus entitled to the benefit of doubt. The Appellant is acquitted of the charges framed. The impugned judgment of conviction and order on sentence are set aside. Appeal is disposed of. The bail bond and the surety bond are discharged.

**(MUKTA GUPTA)**  
**JUDGE**

**MAY 03, 2013**  
**‘vn’**