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

+ CRL.A. 7/2006

% ***Judgment dated 5.12.2013***

KISHAN SINGH RAWAT Appellant
Through: Mr.G.S.Sharma, Advocate

versus

STATE Respondent
Through: Mr.Firoz Khan Ghazi, Adv. for State

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. The appellant has assailed the judgment dated 7.12.2005 and the order on sentence dated 8.12.2005 by which the appellant has been convicted for the offence under Sections 7, 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act; and sentenced to undergo rigorous imprisonment for a period of one year and pay fine of Rs.2,000/- and in default of payment of fine further simple imprisonment for a period of two months, under section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act; and also undergo rigorous imprisonment for a period of six months and pay fine of Rs.1,000/- under section 7 of the Prevention of Corruption Act, 1988 and default of payment of fine further simple imprisonment for a period of one month. Both the sentences were to run concurrently. The trial court has noticed the case of the prosecution which reads as under:

“The factual matrix of the prosecution case stands revealed from the complaint dated 1.9.1999 of Shri Kailash Sharma, s/o.Shri Sita Ram Sharma, aged 25 years r/o.E-533, Gali No.10, West Vinod

Nagar, Delhi-92 which when translated reads as under:

About 1-1/2 years ago, I had obtained an electric connection for my abovesaid house. Its first electric bill was received by me in January, 1999 for a sum of Rs.1,070/- and the meter reading was 970 at that time which I had compared with the bill of my neighbour whose meter reading was much low. Thereafter I received another bill which indicated the meter reading as 1170 and thereafter I received yet another bill in May, 1999 in which the meter reading was 1510. Regarding this, I had moved an application on 26.7.1999 and at that time the meter reading was 839 units. On 29.7.1999 two officials from the office of DVB had come to my house for checking the meter and they told me that the meter reading was 845 at that time. For this checking, the Area Inspector Mr.Kapil had come. After one week, I had gone to the office of DVB, Radhu Palace and I met the dealing clerk Mr.Rawat and had requested him to rectify my bill as the amount of the bill was quite high whereas the meter reading was low and for which the report has already been sent to him by the Area Inspector Mr.Kapil and that my bill may be rectified. On which, Mr.Rawat told that this way my work will not be done and I will have to spend some money. Thereafter I asked him as to how much money will have to be spend by me. On this Mr.Rawat replied that it will involve expenses of Rs.500/- and I told him that I am a poor person and cannot give money but Mr.Rawat did not agree. Yesterday on 31.8.1999 I had met Mr.Rawat and again requested for rectification of my bill and he again demanded Rs.500/- and after lot of

request, he had agreed for accepting Rs.300/- as bribe money and had asked me to come in his office with Rs.300/- today at 10AM. I am a poor person and I am again giving of bribe. As a last resort, I have come to report. I have no dealings with Mr.Rawat and I have no grudge against him. I have brought the bribe money of Rs.300/-. Appropriate legal action be taken.

3. On the above said complaint, pre raid proceedings were drawn and the raid was conducted and after successful completion of the raid, FIR No.32/1999 was registered and the accused was arrested and after completion of the post raid proceedings and the investigation, challan was filed in the Court u/s.7/13 of the Prevention of Corruption Act. Accused was summoned and copy of the challan was supplied to him and thereafter the accused was heard on the point of charge and on 14.8.2002, charge u/s.7 read with 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 was framed against the accused to which he pleaded not guilty and claimed trial.

4. During the trial, the prosecution has got examined eight witnesses. PW-1 Mr.Kailash Sharma is the complainant PW-6 Sh.Shiv Kumar is the panch witness. PW-7 Inspector Prem Chand is the raid officer; PW-2 Sh.R.K. Joshi is ACP in the Anti Corruption branch who has proved the deposit of case property i.e. LHW-1 and LPPW-I by the IO; PW-3 Sh.N.P. Singh is the General Manager with DVB who is the sanctioning authority and has proved the sanction

order Ex.PW-3/A. PW-3 Sh.Siri Pal Singh is an Account Superintendent from the Laxmi Nagar Office of DVB who has proved memo Ex.PW-4/A and Ex.PW4/B-1 to B-5 regarding seizure of two meter book sheets and three tests reports by the IO. PW-5 HC Surinder Singh is MHCM who has proved the deposit of case property i.e. LHW-II and LPPW-II by the IO and PW-8 ACP V.P. Singh is the investigating officer of this case.

5. *Accused in his statement u/s.313 Cr.P.C. has denied the prosecution case and has stated as under:*

“I am innocent. I never demanded or accepted any money from the complainant. The complaint was filed at the instance of one Mukesh Sharma who had grudge against me as he had come to me one month prior to the raid to get the bill rectified of his relative but I was not competent to do this work so I refused. So he had grudge against me. One the date of raid, I was going to the second floor in computer room and I noticed that the complainant of this case followed me and tried to hand over some money to me which I refused and in the meantime the police came and arrested me and took me to anti corruption branch and implicated me in this false case.”

Accused has chosen not to lead any evidence in his defence.”

2. Mr.Sharma, counsel for the appellant submits that the judgment of conviction and order on sentence are contrary to law and facts established on record. There is no evidence against the appellant justifying his

conviction in this case.

3. It is further submitted that the testimony of the complainant, PW-1 Sh.Kailash Sharma suffers from contradictions and has not been supported and corroborated by the evidence of PW-6, Sh.Shiv Kumar as also PW-8. It is contended that the complainant has failed to establish that any demand was made by the appellant and in the absence thereof no case is made out under Section 13(a) of the Act. It is next contended that the evidence of PW-1 is not reliable as in his examination-in-chief he has deposed that bribe of Rs.1,000/- was demanded, whereas in the initial complaint lodged by him the amount so demanded was mentioned at Rs.500/-. It is submitted that this contradiction is material which goes to the root of the matter. It is further submitted that the testimony of the panch witness is also not trustworthy and reliable, as he is a stock witness of the respondent, which is evident from his testimony wherein he has deposed that he has been a panch witness in five or six matters.
4. Another argument which has been raised by counsel for the appellant is that the trial court has failed to appreciate that the prosecution has failed to prove that the appellant was not in a position to rectify the electricity bill in question, which could have only been done by the Executive Engineer, DVB while the appellant was only a senior clerk and no documents pertaining to the demand against the complainant or rectification application were seized from the appellant.
5. Mr.Sharma also laboured hard to contend that the prosecution has deliberately not cited one Mr.Mukesh Sharma as a witness, who admittedly accompanied the complainant and was present with the complainant at all stages and it is at the behest of this Mukesh Sharma that a false complaint against the appellant was made. It is submitted that even otherwise all other official witnesses could not prove the guilt of the

appellant.

6. Counsel also contends that there is no clear evidence that the contents of the hand-wash of the appellant was not tampered with before its analysis.
7. Mr.Sharma counsel for the appellant has also submitted that the learned trial court has erred in law in convicting the appellant under Section 7 and 13(2) read with section 13 (1)(d) of the Prevention of Corruption Act, 1988, whereas based on the evidence no offence under section 13 (1)(d) has been proved against the appellant.
8. Elaborating his arguments further, Mr.Sharma, counsel for the appellant, also submits that the trial court has observed that since illegal gratification was accepted by the appellant, presumption under Section 20 of the Prevention of Corruption Act automatically arises and the burden would shift on the accused to explain the circumstances to prove his innocence. It is contended that a bare reading of Section 20 would show that benefit of this section would accrue only in cases punishable under Sections 7, 11 or clause A or clause B of Sub-section 1 of Section 13, whereas in the present case a charge has not been framed under any of the above sections, but under Section 13 (1) (d) of the Prevention of Corruption Act.
9. Per contra counsel for the State submits that the prosecution has been able to prove its case beyond any shadow of doubt. There are no material contradictions in the evidence of the complainant, PW-1 and the evidence of complainant is duly corroborated by the evidence of PW-6 and PW-8. It is contended that the testimony of PW-1, the complainant, makes it abundantly clear that the appellant had demanded a sum of Rs.500/- and subsequently he agreed to accept Rs.300/- for the purpose of rectification of the electricity bill and, thus, the trial court has rightly convicted the appellant under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. Counsel for the state also submits that no

doubt initially PW-1 in his testimony had deposed that the appellant had demanded Rs.1000/-, but subsequently in the later part of his testimony he clarified that he had inadvertently mentioned Rs.1000/-, whereas the demand made was of Rs.500/-.

10. Counsel further submits that merely because the panch witness has deposed that he was a witness in five or six cases that by itself would not make his testimony unreliable. It is submitted that the evidence of panch witness is duly corroborated with the evidence of PW-1 and PW-8. Counsel submits that merely because the rectification of the electricity bill was not to be done by the appellant that by itself cannot be a ground for acquittal of the appellant. It is also submitted that much cannot be read into the submission that Satish Sharma and Mukesh Sharma were not cited as a witness. It is submitted that in view of the fact that incident was witnessed by PW-1, complainant; PW-6 panch witness; and PW-7, the I.O.; and PW-8, THE raiding officer, there was no necessity of citing Mukesh Sharma as one of the witnesses. Counsel further submits that in case the defence was of the view that Mukesh Sharma was a vital witness, the appellant could have well cited him as a defence witness.
11. Counsel for the State also submits that upon reading of the testimony of PW-1 the complainant as also the testimony of PW-6, the appellant has been rightly convicted under the provisions of Sections 7, 13(2) read with section 13(i) (d) of the Prevention of Corruption Act. Counsel for the State submits that the presumption under Section 20 of the Prevention of Corruption Act has not been rebutted by the appellant.
12. I have heard learned counsel for the parties, considered their rival submissions and also carefully examined the evidence on record. The arguments of Mr.Sharma, learned counsel for the appellant, can be summarised as under:

- (i) Material contradictions in the evidence of PW-1, PW-6 and PW-8;
- (ii) Benefit of Section 20 of Prevention of Corruption Act is not available to the prosecution in respect of Section 13 (i)(d) of the PC Act;
- (iii) Prosecution has failed to prove that any demand was made by the appellant;
- (iv) Mr.Mukesh Sharma was not cited as a witness;

13. Arguments of Mr.Ghazi, learned counsel for the State, can be summarised as under:

- (i) There are no material contradictions in the evidence of PW-1, PW-6 and PW-8;
- (ii) The evidence of PW-1, complainant, and PW-6, panch witness, clearly establishes that a demand was made by the appellant from the complainant and, thus, Section 13 (i)(d) of the PC Act has been rightly attracted and the prosecution has discharged its burden of proof;
- (iii) Non-citing of Mr.Mukesh Sharma as a witness would not be fatal to the case of the prosecution as material witnesses have deposed against the appellant;
- (iv) The appellant could have examined Mr.Mukesh Sharma as a defence witness; *and*
- (v) No question has been put to PW-1, PW-6 and PW-8 during cross-examination with regard to Mr.Mukesh Sharma.

14. PW-1, the complainant, has testified that in the year 1999 he was working as a Carpenter. He had received an exorbitant electricity bill. He sought

rectification of the bill by moving an application in the office of DESU near Radhu Place. He went to the office of DESU, Radhu Place, sometimes in the eighth month of the year. There he was asked to contact Mr.Rawat, appellant herein. He was asked by the appellant to come after 20 days. Thereafter PW-1 met the appellant on a number of occasions. The appellant asked PW-1 that in case he wanted his work to be done he should pay to the appellant Rs.1,000/-. The amount of Rs.1,000/- was reduced to Rs.300/- after being told by PW-1 that he is a poor man. PW-1 further goes on to testify that he reported the matter to the Anti-Corruption Branch. He made a statement on 1.9.1999 (Exhibit PW-1/A). He also identified his signature on the statement at Point 'A'. He was accompanied by his neighbour, Mr.Mukesh Sharma, to the Anti-Corruption Branch. He produced six currency notes of Rs.50/- before the Police officials. The numbers of the currency notes were noted down in Exhibit PW-1/B. He also identified his signatures at Point 'A' on Exhibit PW-1/B. He was then described the procedure by which powder was applied on those notes and he was instructed to give the notes to the appellant on a specific demand. He thereafter went to the office of DESU where the appellant was working and met him. The appellant asked him to wait for some time and after the persons sitting with the appellant had left, the appellant came out of his office and asked him if he had brought the money, to which he replied that he had brought the money but it was slightly less on which the appellant felt annoyed and told him that he would accept only Rs.300/-. Thereafter he took out the money from his upper pocket and gave it to the appellant, who accepted the notes with his right hand and kept the same in his right side pocket of his pant. Thereafter, the witness, who was accompanying him, gave some signal to the Police party. The appellant was apprehended at the spot and he was

brought to his office. Wash of the hands of the appellant was taken upon which the solution turned red. Wash of pocket of the pant of the appellant was also taken, which also turned red. Those solutions were then transferred in separate bottles, which were sealed. The money taken from his pant pocket was also seized.

15. PW-1 was also cross-examined by the PP, in his cross-examination he testified that it was correct that his complaint, PW-1/A, was recorded in the presence of Mr. Shiv Kumar. He further clarified that initially Rs.500/- was demanded and finally the amount was settled for Rs.300/-. He clarified that on the previous day he had by mistake and on account of lapse of time stated that initial demand was for Rs.1,000/-. He had also stated in the complaint that he had no enmity with the appellant.
16. During cross-examination by counsel for the appellant, PW-1 denied the suggestion that the appellant never demanded any money.
17. Evidence of PW-6, who is the panch witness, is also relevant. In his testimony, PW-6 has testified production of six currency notes of Rs.50/-, each, by the complainant, PW-1, and recording of the numbers of notes by PW-7. He also testified that he was instructed to accompany the complainant, PW-1; to hear the conversation; to see the transaction between PW-1 and the appellant; and once the deal is struck to give the signal. This witness has also clearly testified that after reaching the office of the appellant, the appellant had enquired from the complainant whether he had brought the money for getting his work done, upon which the complainant requested the appellant to take lesser amount as he was a poor person. But the appellant remained adamant by saying that he would charge Rs.300/-. The money was handed over to the appellant, which was accepted by him and he kept it in his pocket. PW-6 also described that the hand wash of the appellant and the wash of his pant's pocket was done

upon which the solution turned pink.

18. No doubt that PW-6 has deposed in his cross-examination that he deposed as a panch witness for the Anti-Corruption Branch on 5-6 occasions, but there is nothing in his cross-examination, which would shake his testimony on all material aspects.
19. Raiding Officer, PW-8, has also testified with regard to the date and time of the incident, the amount of money involved, the instructions given by him to the complainant and the panch witness. He has also testified that after the signal was given the appellant was arrested, his hand wash and wash of his pocket of the pant were taken, upon which the solution turned pink.
20. The first submission of learned counsel for the appellant is that there are material contradictions in the evidence of PW-1, PW-6 and PW-8. I find no force in the above submission, as no material contradictions have been pointed out by the appellant except that initially the complainant had stated that a demand was made for Rs.500/- whereas in the testimony he testified that a demand was made for Rs.1000/-. PW-1, during his cross-examination, has clarified that the demand was of Rs.500/- and Rs.1000/- had been stated by him by mistake and due to lapse of time. In my view, this is not a material contradiction, which goes to the root of the matter or which would drastically effect the case of the prosecution or would by itself be a ground to acquit the appellant. In fact this would show that the witness is a truthful witness who has admitted that due to lapse of time he had stated that Rs.1000/- was demanded.
21. In the case of *Shyamal Ghosh v. State of West Bengal*, reported at 2012 (7) SCC 646, it has been held by the Apex Court that while considering contradictions the Courts must read the testimonies of the witnesses as a whole and only consider those aspects, which go to the root of the matter

and no further contradiction would affect the case of the prosecution.
Relevant portion of the judgment reads as under:

“46. Then, it was argued that there are certain discrepancies and contradictions in the statement of the prosecution witnesses inasmuch as these witnesses have given different timing as to when they had seen the scuffling and strangulation of the deceased by the accused. It is true that there is some variation in the timing given by PW 8, PW 17 and PW 19. Similarly, there is some variation in the statement of PW 7, PW 9 and PW 11. Certain variations are also pointed out in the statements of PW 2, PW 4 and PW 6 as to the motive of the accused for commission of the crime. Undoubtedly, some minor discrepancies or variations are traceable in the statements of these witnesses. But what the Court has to see is whether these variations are material and affect the case of the prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution.

47. xxxx

48. xxxx

49. It is a settled principle of law that the Court should examine the statement of a witness in its entirety and read the said statement along with the statement of other witnesses in order to arrive at a rational conclusion. No statement of a witness can be read in part and/or in isolation. We are unable to see any material or serious contradiction in the statement of these witnesses which may give any advantage to the accused.

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68. From the above discussion, it precipitates that the discrepancies or the omissions have to be material ones and then alone, they may amount to contradiction of some serious consequence. Every omission cannot take the place of a contradiction in law and therefore, be the foundation for doubting the case of the prosecution. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other

witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contra-distinction to mere marginal variations in the statement of the witnesses. The prior may have effect in law upon the evidentiary value of the prosecution case; however, the latter would not adversely affect the case of the prosecution.

69. Another settled rule of appreciation of evidence as already indicated is that the court should not draw any conclusion by picking up an isolated portion from the testimony of a witness without adverting to the statement as a whole. Sometimes it may be feasible that admission of a fact or circumstance by the witness is only to clarify his statement or what has been placed on record. Where it is a genuine attempt on the part of a witness to bring correct facts by clarification on record, such statement must be seen in a different light to a situation where the contradiction is of such a nature that it impairs his evidence in its entirety.

70. In terms of the explanation to Section 162 Cr.P.C. which deals with an omission to state a fact or circumstance in the statement referred to in sub-section (1), such omission may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether there is any omission which amounts to contradiction in particular context shall be a question of fact. A bare reading of this explanation reveals that if a significant omission is made in a statement of a witness under Section 161 Cr.P.C., the same may amount to contradiction and the question whether it so amounts is a question of fact in each case. (Sunil Kumar Sambhudayal Gupta v. State of Maharashtra (2010) 13 SCC 657 and Subhash v. State of Haryana (2011) 2 SCC 715.

71. The basic element which is unambiguously clear from the explanation to Section 162 Cr.P.C. is use of the expression 'may'. To put it aptly, it is not every omission or discrepancy that may amount to material contradiction so as to give the accused any advantage. If the legislative intent was to the contra, then the legislature would have used the expression 'shall' in place of the word 'may'. The word 'may' introduces an element of discretion which has to be exercised by the court of competent jurisdiction in

accordance with law. Furthermore, whether such omission, variation or discrepancy is a material contradiction or not is again a question of fact which is to be determined with reference to the facts of a given case. The concept of contradiction in evidence under criminal jurisprudence, thus, cannot be stated in any absolute terms and has to be construed liberally so as to leave desirable discretion with the court to determine whether it is a contradiction or material contradiction which renders the entire evidence of the witness untrustworthy and affects the case of the prosecution materially.”

22. The contradictions, which have been pointed out by counsel for the appellant, are to be considered in the light of the fact that the evidence of PW-1, complainant, is duly corroborated by the evidence of PW-6 and PW-8.
23. The Second argument raised by learned counsel for the appellant is that the trial court has wrongly relied upon Section 20 while holding the appellant guilty under Section 13(1)(d) of the PC Act.
24. Section 20 of the Prevention of Corruption Act reads as under:

“20. Presumption where public servant accepts gratification other than legal remuneration.-

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) or 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) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification

(other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give 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.

(3) Notwithstanding anything contained in sub- sections (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.”

25. Section 20 makes it abundantly clear that the onus to prove the offence under Section 13(i)(d) of PC Act rests on the prosecution and unlike Section 7 there is no presumption in favour of the prosecution.
26. Learned counsel for the appellant has also strongly argued before this Court that no case is made out against the appellant under Section 13(i)(d) of the PC Act.
27. To bring home the guilt of the appellant under Section 13 (i)(d) of the PC Act the onus is on the prosecution to prove that the appellant had accepted the gratification for doing a favour to the complainant in exercise of his official function.
28. In the case of ***P.K. Gupta v. C.B.I.***, reported at 181 (2011) DLT 706, the Delhi High Court has observed as under:

“12. In the case of *C.K. Damodaran Nair v Govt. of India* 1997 CrL.L.J. 739, the Supreme 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".

13. In the case of *M.W. Mohiuddin v State of Maharashtra* 1995 (2) SCR 864, the Supreme Court referring to the case of *Ram Krishan and another v State of Delhi* (1956) SCR 183 as well as dictionary meaning of the word "obtain" observed as under:

"...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 in 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).

14. In *A. Subair v State of Kerala*, (2009) 6 SCC 587, the Supreme Court held as under:

"The legal position is no more *res integra* that primary requisite of an offence under Section 13(1)(d) of the Act is proof of a demand or request of a valuable thing or pecuniary

advantage from the public servant. In other words, in the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence under Section 13(1)(d) cannot be held to be established."

29. The evidence of PW-1 and PW-6 leave no room for doubt that on the fateful day, the appellant had demanded money from the complainant in the presence of PW-6 and had shown his unhappiness when a lesser amount was offered and he stated that he would not accept less than Rs.300/-. Although the trial court has noticed that Section 20 of the PC Act would be applicable to both Section 7 and Section 13(i)(d) of the PC Act yet in my view the trial court has fallen in error in view of the explicit provision of Section 20 of the PC Act, however, in view of the categorical testimony of PW-1 and PW-6, wherein an explicit demand as made by the appellant stands proved, no benefit can accrue to the appellant.
30. There is no force in the submission made by learned counsel for the appellant that since the appellant was not in a position to rectify the excess amount of the bill and he was incompetent to do so, this itself would be another ground on which the case of the prosecution would fail. Upon examination of the evidence, I find that although the complainant has been cross-examined at length but there is no cross-examination on this aspect of the matter. Moreover, incapacity of a Government servant to show any favour to the complainant by itself cannot be a ground to allow the appeal. Undisputedly the appellant was working in the DVB as a Clerk. The acceptance of money duly stands proved by the evidence of PW-1, complainant, and PW-6, panch witness. Their evidence stands duly corroborated by the testimony of PW-7 and the FSL report, Ex.PW-7/C, which shows that the hand wash solutions were kept in bottles and the solution turned pink.

31. In view of the evidence of PW-1 and PW-6, wherein it has been categorically stated that a demand was made by the appellant, in my view the prosecution has been able to discharge its onus to prove the ingredients of Section 13(1)(d) of the PC Act. In view of above, no grounds are made out to differ from the view taken by the trial court. The appeal is without any merit and the same is accordingly dismissed. The appellant shall surrender by 15.1.2014.

G.S.SISTANI, J

DECEMBER 05, 2013

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