

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

**CRL.A. 14 of 2008**

Reserved on: February 24, 2014

Date of decision: March 10, 2014

HC RAMKESH MEENA

..... Appellant

Through: Mr. V.K. Malik, Mr. Jagdeep Sharma,  
Mr. Rahul Raj Mehra & Mr. Rajeev Chauhan,  
Advocates.

versus

STATE

..... Respondent

Through: Ms. Isha Khanna, APP and  
Ms. Aashaa Tiwari, APP.

**With**

**CRL.A. 68 of 2008**

TEJ SINGH

..... Appellant

Through: Mr. Bhupesh Narula and Mr. Ashikesh  
Gupta, Advocates.

versus

STATE

..... Respondent

Through: Ms. Isha Khanna, APP and  
Ms. Aashaa Tiwari, APP.

**With**

**CRL.A. 35 of 2008**

H.C.NAMONARAYAN MEENA

..... Appellant

Through: Mr. Ramesh Gupta, Senior Advocate with  
Mr. Bharat Sharma, Advocate

versus

STATE

..... Respondent

Through: Ms. Isha Khanna, APP and  
Ms. Aashaa Tiwari, APP.

**With**

**CRL.A. 41 of 2008**

RAJENDER PRASAD (Constable)

..... Appellant

Through: Mr. B.R. Sharma, Advocate.

versus

STATE

..... Respondent

Through: Ms. Isha Khanna, APP and  
Ms. Aashaa Tiwari, APP.

**With**

**CRL.A. 36 of 2008**

HC BALBIR SINGH

..... Appellant

Through: Mr. Ramesh Gupta, Senior Advocate with  
Mr. Bharat Sharma, Advocate

versus

STATE

..... Respondent

Through: Ms. Isha Khanna, APP and  
Ms. Aashaa Tiwari, APP.

**With**

**CRL.A. 39 of 2008**

RAJENDRA PRASAD

..... Appellant

Through: Mr. Gaurave Bhargava, Advocate

versus

STATE

..... Respondent

Through: Ms. Isha Khanna, APP and  
Ms. Aashaa Tiwari, APP.

**With**

**CRL.A. 34 of 2008**

ASI BALRAM DAHIYA

..... Appellant

Through: Mr. Ramesh Gupta, Senior Advocate with  
Mr. Bharat Sharma, Advocate

versus

STATE

..... Respondent

Through: Ms. Isha Khanna, APP and  
Ms. Aashaa Tiwari, APP.

**With**

**CRL.A. 63 of 2008**

RAMINDER SINGH

..... Appellant

Through: Mr. Kirti Uppal, Senior Advocate with  
Mr. Ankur Goel and Mr. Anshuman Sahni,  
Advocates.

versus

STATE

..... Respondent

Through: Ms. Isha Khanna, APP and  
Ms. Aashaa Tiwari, APP.

**And**

+

**CRL.A. 65 of 2008**

INDER SINGH BISHT

..... Appellant

Through: Mr. K. Singhal & Mr. Siddhanth  
Mittal, Advocates.

versus

STATE

..... Respondent

Through: Ms. Isha Khanna, APP and  
Ms. Aashaa Tiwari, APP.

**CORAM: JUSTICE S.MURALIDHAR**

**JUDGMENT**

**10.03.2014**

1. These are nine appeals directed against the common judgment dated 27<sup>th</sup> November 2007 passed by the learned Special Judge, Delhi in Criminal Case No. 19/06/97 arising out of the FIR No. 37 of 1995 convicting the Appellants

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[except Raminder Singh, Appellant in Criminal Appeal No. 63 of 2008] under Section 8 of the Prevention of Corruption Act, 1988 ('PC Act') read with Section 120 of Indian Penal Code ('IPC')] for the offences under Sections 7, 13 (2) and 13 (1) (d) both read with Section 120B IPC. The appeals are also directed against the order on sentence dated 30<sup>th</sup> November 2007 whereby the Appellants, ASI Rajinder Prasad, ASI Bal Ram Dahibya, HC Namo Narayan Meena, Head Constable ('HC') Balbir Singh, HC Ram Kesh Meena, Constable Rajinder Prasad were sentenced to undergo rigorous imprisonment ('RI') for six months and to pay a fine of Rs. 500 and in default to undergo RI for one month for the offence under Section 120B IPC, and to undergo RI for six months and to pay fine of Rs. 500, in default to undergo RI one month for the offence under Section 7 PC Act read with Section 120B IPC and to undergo RI for one year and to pay a fine of Rs. 500, in default to undergo RI for one month for the offence under Section 13 (2) read with 13 (1) (d) both read with Section 120B IPC.

2. The Appellants, SI Inder Singh and HC Tej Singh, were sentenced to undergo RI for six months and to pay a fine of Rs. 500, in default to undergo RI for one month for the offence under Section 120B IPC, and to undergo RI for six months and to pay a fine of Rs. 500, in default to undergo RI for one month for the offence under Section 7 PC Act read with Section 120B IPC and to undergo RI for one year and to pay a fine of Rs. 500 in default to undergo RI one month for the offence under Section 13 (2) read with Section 13 (1) (d) PC Act both read with Section 120B IPC.

3. Appellant Raminder Singh, was sentenced to undergo RI for six months and to pay a fine of Rs. 500, in default of payment, to undergo one month RI for the offence under Section 120B IPC, and to undergo RI for six months and to pay a fine of Rs. 500, in default to undergo RI for one month for the offence under Section 8 PC Act read with Section 120B IPC.

4. There are two sets of accused in the present case. One set of public servants comprises of SI Inder Singh, ASI Balram Dahiya, ASI Rajender Prasad, HC Ramkesh Meena, HC Balbir Singh, HC Tej Singh, HC Namoh Narayan Meena, and Constable Rajender Parsad. The other set of non-public servant accused comprises of Raminder Singh, Sukhinder Singh, Balwant Singh and Gurinder Singh of which barring Raminder Singh, the other three were acquitted.

5. The prosecution story comprises of two distinct events. One is the incident near the crossing at Punjabi Bagh Club which took place on 28<sup>th</sup> November 2004 involving the first set of accused. The other pertains to the illegality surrounding the issue of 'monthly cards' or 'immunity cards' by the accused officials of the Transport Department of the Government of National Capital Territory of Delhi ('GNCTD'). It is the latter incident that involved the four non-public servant accused, out of whom only Raminder Singh was convicted.

6. The prosecution story was that truck No. TN-04 A 2500 belonging to M/s. Bhandari Interstate Carrier ('BIC') driven by driver Balbir Singh (PW-5) was loaded with the goods and was travelling from Madras to Delhi. BIC had its main office at Pahar Ganj and a branch office at Punjabi Bagh. Mr. Naveen Pal Singh Bhandari (PW-3) was its partner. The said truck entered Delhi at about 4 am on 28<sup>th</sup> November 1994. The first set of accused, who are the enforcement staff of the Delhi Transport Authority ('DTA'), Janak Puri, was on duty at Ring Road near Punjabi Bagh Club for checking the vehicles entering Delhi. The case of the prosecution was that when the truck driven by PW-5 entered the Punjabi Bagh area, the DTA enforcement staff intercepted it and took into possession the documents of the truck and the documents of the loaded goods. The truck was taken to the Nav Bharat Dharm Kanta at 6, Amar Park, Rohtak Road, Delhi for weighing. The weight was found within the permissible limit. By the time PW-5 returned to the place of checking, the staff had left. PW-5 then took the loaded truck without the documents to the office of BIC. When at about 10 am the Manager of the said office, Khem Singh Rana (PW-6) arrived, PW-5 informed him about what had happened. In turn, PW-6 informed Mr. Paramjit Singh (PW-13), the General Manager of BIC that the STA staff had retained the documents of the truck and the loaded goods. In turn, PW-13 informed PW-3, the partner of BIC. Thereafter PW-13 directed PW-6 to meet the staff. PW-6 is supposed to have gone to the checking place but he could not locate the staff. On the next day, i.e. 29<sup>th</sup> November 1994, PW-13 visited the Punjabi Bagh office of the transporter where PW-6 told him that the staff was present on duty at Peera Garhi and then PW-13 along with PW-5 went to the Peera Garhi crossing and met the staff. PW-5, by pointing towards the accused SI Inder Singh, informed PW-

13 that it was he who had taken the documents of the truck. PW-13 asked SI Inder Singh about the documents of the truck. In turn, SI Inder Singh asked the members of the staff to search for the documents but the documents could not be found. SI Inder Singh told PW-13 that the documents might be available in the transport office of DTA at Janakpuri. PW-13 then got accused SI Inder Singh connected on the telephone to PW-3 to whom SI Inder Singh informed that the documents would be returned.

7. On 30<sup>th</sup> November 1994, PW-13 went to DTA Janakpuri and again contacted SI Inder Singh. Upon a search conducted by him and his staff, the documents could not be found. BIC then obtained duplicate copy of the documents of the loaded goods for delivery to the party.

8. A news item came to be published in '*The Statesman*' stating that the enforcement staff of the DTA had illegally seized documents of the truck driven by PW-5 for procuring monthly graft. Taking note of this news item, the Deputy Director (Transport) directed the Enforcement Officer (HQ), Inspector Bir Singh (PW-1) to conduct an enquiry and submit a report.

9. Meanwhile, on 3<sup>rd</sup> December 1994, BIC filed Writ Petition (Civil) No. 4901 of 1994 against GNCTD and six others including SI Inder Singh in this Court, stating that with the intention to procure monthly graft, the Respondents had deliberately ignored the record pertaining to the weights and insisted upon having the trucks duly weighed by impounding the documents. It was also pointed out that the Respondents had adopted the

device of issuing 'cards' against monthly payment, the holder of which was spared victimization.

10. By an order dated 8<sup>th</sup> December 1994 in the writ petition, the High Court appointed two learned Advocates of the Court as Local Commissioners ('LCs') for reporting about the documents seized by the transport department, selling of the cards by the brokers at Roshanara Road and to purchase the cards from there, and to check the mobile squad of the transport department. The LCs (PW-16 and PW-17) associated PW-13 (Mr. Paramjit Singh) and one Mr. G.M. Khan (PW-12) and submitted their reports on 10<sup>th</sup> December 1994 and 16<sup>th</sup> December 1994 (Ex.PW-16A and Ex.PW-16/B).

11. The enquiry report of the transport department prepared by PW-1 (Ex.PW-1/B) showed that the staff of the Enforcement Wing of the DTA was present on duty at Punjabi Bagh Club on 28<sup>th</sup> November 1994 from 4 to 8 am for checking of the heavy vehicles as per the duty roster. The report further stated that the truck in question was weighed at Nav Bharat Dharam Kanta on 28<sup>th</sup> November 1994 in the early morning. PW-1 reported that initially HC Tej Singh took papers of the truck into possession and later on he passed these papers to SI Inder Singh Bisht as told to him by HC Balbir Singh. On the basis of the said report, the Commissioner (Transport) suspended SI Inder Singh Bisht and HC Balbir Singh. PW-1 also reported that a representative of BIC met SI Inder Singh and Inspector P.S. Behl on 28<sup>th</sup> and 29<sup>th</sup> November 1994 at Multan Nagar checking point and both SI Inder Singh and Inspector P.S. Behl tried to convince the said representative that papers of the said

truck were not in their possession. PW-1 reported that both Inspector P.S. Behl and SI Inder Singh Bisht did not cooperate with him during the inquiry and therefore, he could not trace out the documents of the truck. PW-1 submitted his preliminary report on 17<sup>th</sup> December 1994 (Ex.PW-1/A) to the Commissioner (Transport) upon which he was directed to conduct a detailed inquiry. He conducted a detailed inquiry and submitted his report on 7<sup>th</sup> January 1995 (Ex.PW1/B). On the directions of the High Court, PW-1 wrote a letter to the Station House Officer ('SHO'), P.S. Subzi Mandi directing him to register the FIR. Accordingly, FIR No. 37 of 1995 under Section 420 IPC was registered and the investigation was entrusted to Inspector Roshan Lal (PW-14).

12. The LCs visited the Transport Department and other places and submitted a report dated 10<sup>th</sup> December 1994 to the High Court. The LCs stated that they went to a building situated at Roshanara Road which had an advertisement board 'Okara Battery'. Mr. G.M. Khan (PW-12), an employee of BIC was with them. On the first floor of the said building, four persons were sitting. PW-12 gave them Rs. 700 for two cards @ Rs. 350 per card. PW-12 was asked about the truck numbers which were written by hand on the reverse of the cards. PW-12 disclosed to the LCs that the name of the broker was Raminder Singh.

13. In their report, the LCs also mentioned that they went to IBP petrol pump for refuelling and they noticed a fully laden truck parked there. In the presence of PW-13, the driver of that truck was asked if there was a working

system by which the purchase of cards could enable the transport companies to avoid harassment. The truck driver showed them an identical card on the reverse of which the truck number was written and told them that this was a very old practice for the last several years. The LCs obtained cash receipt from the petrol pump as proof.

14. In the further report dated 16<sup>th</sup> December 1994, the LCs stated that after making enquiries from Rajpur Road Transport Office they stopped near Tis Hazari Courts at about 6.20 pm. They enquired at random from a driver of one of the several trucks parked by the side of the road about the system of immunity cards and the driver willingly produced a similar card with two stickers and stated that the said card was available at Roshanara Road for Rs. 300.

15. By an order dated 1<sup>st</sup> March 1995, the High Court directed for the transfer of investigation of the case from P.S. Subzi Mandi to Deputy Commissioner of Police ('DCP'), Anti Corruption Branch. Thereafter, it was transferred to the Crime Branch and the Assistant Commissioner of Police ('ACP') Jaipal Singh was entrusted with the investigation of the case. *Inter alia*, the Investigating Officer ('IO') arrested the accused persons and conducted a search in the office and residence of accused Sukhinder Singh for immunity card and related documents but nothing could be found. The IO seized the documents from Nav Bharat Dharam Kanta and recorded the disclosure statement of accused Sukhinder Singh. Subsequently, the specimen handwritings of accused Sukhinder Singh, Raminder Singh, Balwant Singh

and Gurinder Singh were taken for comparison with the handwriting on the two visiting cards. The IO also arrested the members of the enforcement staff of the Transport Department who were on duty on 28<sup>th</sup> November 1994 at Punjabi Bagh from 4 am to 8 am.

16. The documents collected during the investigation were sent to the Commissioner (Transport) for grant of sanction for prosecution. Then the Commissioner (Transport) accorded sanction for prosecution of the accused. The Forensic Science Laboratory ('FSL') report (Ex.PW-18/E) stated that the handwriting on the visiting cards was that of the accused Raminder Singh. However, no opinion was given regarding other questioned writings. After completion of the investigation, the charge sheet was filed against the accused persons.

17. Before charge could be framed, accused Balwant Singh expired. By an order dated 4<sup>th</sup> April 2003, the learned Special Judge passed an order holding that the public servant accused were liable to be charged under Section 120B IPC read with Sections 7 and 13 (1) (d) and 13 (2) PC Act. These were SI Inder Singh Bisht, ASI Rajinder Prasad, ASI Balram Dahiya, HC Balbir Singh, HC Tej Singh, HC Ramkesh Meena, HC Namonarayan Meena and Constable Rajinder Prasad. The learned Special Judge also found *prima facie* that the accused appeared to have demanded the money from PW-5 and PW-13 and one of the public servants had also obtained Rs. 200 from Mr. Shiv Charan, another driver. As far as the non-public servants, Sukhinder Singh, Raminder Singh and Gurinder Singh were concerned, they were charged for

committing the offence under Section 120B IPC read with Section 8 PC Act by obtaining from PW-12 a sum of Rs. 700 on 9<sup>th</sup> December 1994 in their office, M/s. Okara Batteries at Roshanara Road and giving two immunity cards for being used and shown to the enforcement officials.

18. As regards the public servant accused persons, the charges read as under:

“I, P.K. Bhasin, Special Judge, Delhi hereby charge you (1) Inder Singh Bisht s/o Late Shri Ratan Singh; (2) Rajender Prasad s/o Ram Kishan; (3) Balram Dahiya S/o Chattar Singh; (4) Balbir Singh s/o Pitambar Singh; (5) Tejpal Singh s/o Hukam Singh; (6) Ramkesh Meena s/o Bhonduram; (7) Rajender Prasad s/o Rama Shankar; (8) Namonarayan Meena s/o Thanduram as follows:

That you all while being employed in the Enforcement Department of Delhi Government and as such public servants had on 28<sup>th</sup> November 1994 entered into a criminal conspiracy for extracting illegal gratification from different truck drivers coming into Delhi from outside for not challaning them for violation of Motor Vehicles Rules etc. In discharge of your official duties and thereby you all committed an offence punishable under Section 120B IPC read with Section 7 and 13 (1) (d) of Prevention of Corruption Act, 1988 and within my cognizance.

Secondly on 28<sup>th</sup> November 1994 at about 5-6 am at Ring Road, near Punjabi Bagh Club accused Inder Singh Bisht demanded illegal gratification of Rs. 200 from Balbir Singh of M/s. Bhandari Interstate Carrier pursuant to the aforesaid conspiracy for not challaning truck No. 04-A-2500 which its driver Balbir Singh had brought to Delhi from Madras on that day and thereby all of you committed an offence

punishable under Section 7 of Prevention of Corruption Act, 1988 and within my cognizance.

Thirdly, pursuant to the aforesaid conspiracy on 28<sup>th</sup> November 1994 at Ring Road near Punjabi Bagh Club in the morning time when all of you were checking vehicles one of you obtained a sum of Rs. 200 from another truck driver Shic Charan as 'entry fee' for not challaning his truck No. DL-1G 4776 and thereby you all committed an offence punishable under Section 7 of Prevention of Corruption Act, 1988 and within my cognizance.

Fourthly, on the aforesaid date, time and place pursuant to the conspiracy between you people one of you obtained Rs. 200 from Shiv Charan by corrupt or illegal means or by otherwise abusing position as such public servants and thereby you all committed an offence of criminal misconduct as specified under Section 13 (1) (d) and punishable under Section 13 (2) of the Prevention of Corruption Act, 1988 and within my cognizance.

And I hereby direct that you all be tried by this Court for the aforesaid offences.”

19. As regards the non-public servant accused, the charges read as under:

“I, P.K. Bhasin, Special Judge, Delhi hereby charge you (1) Sukhinder Singh s/o Arjun Singh; (2) Raminder Singh s/o Balwant Singh; (3) Gurinder Singh s/o Balwant Singh as follows:

That you accused Sukhinder Singh, Raminder Singh and Gurinder Singh along with deceased accused Balwant Singh during the year 1992 to 1994 had entered into a criminal conspiracy for committing an illegal act viz. for obtaining money from different transporters/truck drivers as a motive or reward for inducing officials of enforcement department of Delhi Government for not challaning the trucks whose owners/drivers were purchasing immunity cards from you people even if there was some violation of any rule of transport department and thereby you all committed an offence punishable under Section 120B IPC read with Section 8 of Prevention of Corruption Act, 1988 and within my cognizance.

Secondly, pursuant to the aforesaid conspiracy between you people you obtained a sum of Rs. 700 on 9<sup>th</sup> December 1994 at your office by the name of M/s. Okara Batteries at Roshnara Road from one Mr. G.M. Khan and in turn you gave him two immunity cards after mentioning truck No. DL-IL-5888 and DL-1L-5899 on those cards for being used for the aforesaid purpose of their being shown to the enforcement officials of Transport Department so that the trucks bearing these two registration numbers were not challaned for any violation of any rule of the transport department and thereby you all committed an offence punishable under Section 8 of the Prevention of Corruption Act, 1988 and within my cognizance.

And I hereby direct that you all be tried by this Court on the aforesaid offences.”

20. At the outset it must be noticed that as regards the charges against the public servant accused, the first charge is that all of them entered into a criminal conspiracy “for extracting illegal gratification from different truck drivers coming into Delhi from outside.....” The prosecution failed to specify as to who these different truck drivers, from whom illegal

gratification was obtained, were. The charge on the face of it was vague and could not be proved as such by the prosecution. The second charge pertained *inter alia* to demand of illegal gratification of Rs. 200 from PW-5, the driver of BIC. This charge was specific to SI Inder Singh Bisht. However, all the accused have on that basis been charged for the offence under Section 7 of PC Act when even, according to the prosecution, the demand was allegedly made only by SI Inder Singh Bisht. Therefore, as far as the second charge is concerned, the key witness is PW-5, from whom SI Inder Singh Bisht is supposed to have demanded Rs. 200.

21. The third charge was *inter alia* about another truck driven by Mr. Shiv Charan and one of the accused, without mentioning the name, about obtaining Rs. 200 as entry fee for not challaning his truck. The fourth charge was also concerning the conspiracy between the accused persons for obtaining Rs. 200 from Shiv Charan. Both these charges on the face of it failed because Shiv Charan was never examined as the prosecution witness.

22. Resultantly, as regards the public servant accused, the trial essentially related to the first two charges - one pertaining to conspiracy punishable under Section 120B IPC and the other pertaining to SI Inder Singh Bisht demanding a sum of Rs. 200 as illegal gratification from PW-5.

23. It is important to note that there is no charge against SI Inder Singh Bisht about requiring PW-5 to obtain any immunity card from the transport department or from the office with the Board 'Okara Batteries'. This is an

important distinction to bear in mind since the charge against the non-public servant accused pertained to the immunity card issued.

24. As regards the non-public servant accused, i.e., Sukhinder Singh, Raminder Singh and Gurinder Singh, the first charge against them was for entering into a criminal conspiracy for obtaining money “from different transporters/truck drivers as a motive or reward for inducing officials of enforcement department of Delhi Government for not challaning the trucks whose owners/drivers were purchasing immunity cards” from the accused. This was stated to be an offence punishable under Section 120B IPC read with Section 8 PC Act. Here, again, the charge itself was vague as it mentioned different transporters/truck drivers without mentioning who these truck drivers and owners were. The second charge was specific to the accused selling to PW-12 two immunity cards for a sum of Rs. 700 on 9<sup>th</sup> December 1994. Therefore, for the said charge, the critical witness was PW-12.

25. One of the grounds urged before the learned trial Court was that the sanction for prosecution of the public servant accused was not validly granted. During the cross-examination of the Commissioner (Transport), Ms. Kiran Dhingra, PW-2 admitted that she had not mentioned in the sanction order that she had seen any case file and did not state the specific material produced before, and perused, by her. The learned trial Court held that since PW-2 was competent to remove the accused public servants and it was not shown that the material collected during investigation was not submitted

before her, it stood proved beyond reasonable doubt that the sanction for prosecution of the accused public servants was valid.

26. As regards the above issue, it was submitted by Mr. Ramesh Gupta, learned Senior counsel for some of the accused public servants, that on the face of it the sanction order was bad in law since there was no mention therein of the officer concerned examining any case file. Indeed, the Court finds that the learned trial Court had dealt with the issue of grant of sanction most casually. Moreover, the issue was not whether the Commissioner (Transport) was competent to accord sanction but whether the Commissioner (Transport) had applied her mind to the materials placed before her before granting sanction. PW-2 candidly admitted in her cross-examination that the sanction order did not mention the fact that she had perused any case file or any specific material before deciding to grant sanction to prosecute.

27. The Court has perused the sanction order passed by PW-2. It merely states that PW-2, after fully and carefully examining the materials placed before her and after application of mind, considered that the public servant should be prosecuted. One of the allegations noted by her in the sanction order was that on 29<sup>th</sup> November 1994, SI Inder Singh Bisht demanded immunity card for Rs. 500 from PW-13 for releasing the impounded documents. No such charge was actually laid before the Court against SI Inder Singh Bisht. Also against the public servants, in the recital it was stated that “they stopped a number of vehicles and asked the drivers to produce the immunity card, i.e., illegal card issued by Sukhinder Singh and his associates

in conspiracy with the above mentioned public servants.....” There is again no such charge laid before the Court against the accused. In fact there is no link in the charges pertaining to the issuance of immunity cards and the public servant accused. It was also mentioned that “they stopped Truck No. TN-04A-2500 and on failing its driver to produce the immunity card or pay cash, his ‘bilti papers and gate pass were seized by this staff.” This again does not form part of the charges at all. It is, therefore, clear that there is total non-application of mind by the Commissioner (Transport) to the material placed before her because on the same material, the Court framed charges which were different from what was being noted in the recitals to the sanction order. In the circumstances, the Court is of the view that sanction order passed in this case is in a mechanical manner without application of mind to the specific materials placed before the Commissioner (Transport). Accordingly, on this aspect the impugned judgment of the learned trial Court suffers from serious legal infirmity.

27. The learned trial Court judgment begins with examining the issue of criminal conspiracy between the public servants who were on duty on 28<sup>th</sup> November 1994 from 4 to 8 am. The learned trial Court erroneously noted in para 18 that the prosecution case was about criminal conspiracy between the public servants with the non-public servants, viz., Sukhinder Singh, Gurinder Singh, Raminder Singh and the deceased accused Balvinder Singh. There is no such charge at all framed against the public servants accused. Therefore, it appears that even the understanding of the charge by the learned trial Court against the set of accused was erroneous.

28. The further case of the prosecution was that in furtherance of the said criminal conspiracy, no entry charges were demanded “from such drivers” having specified ‘cards’ and such ‘cards’ were pre-paid cards issued by the non-public servant accused persons and “the staff was illegally detaining the documents of the trucks for compelling them to purchase monthly immunity cards which were issued on cash payment by Okara Batteries, Roshnara road, Delhi.” Here again it requires to be noticed that the charges framed against the public servant accused did not mention their insisting on the truck owners/drivers purchasing monthly immunity cards. Here, again, the learned trial Court committed a serious error in misconstruing the charges framed against the two set of accused persons.

29. The next issue to be considered by the learned trial Court was whether the truck in question driven by PW-5 was intercepted by the public servants accused. The learned trial Court referred to the evidence of PW-3 partner of BIC. A perusal of the evidence of PW-3 showed that he had received a telephone call from PW-13 that the documents of the truck and the goods had been taken over by the enforcement staff. He further stated that those documents were necessary for unloading of the goods. Someone from their office went to the place where the truck was intercepted but no official of the transport department could be found. He stated that their representative went to Rajpur Road Office but the documents could not be found there either. When BIC failed to retrieve the documents, it filed a writ petition in this Court. In his cross-examination, PW-3 stated that he had no personal knowledge as to who had seized the documents. PW-3 made no mention of any public servant demanding any illegal gratification from PW-5. He merely

stated that the documents were detained. Again, there is no mention as to who among the accused was involved in intercepting the truck and retaining the documents. Therefore, the evidence of PW-3 did not assist the prosecution as far as the charges against the public servant accused were concerned.

30. The learned trial Court next referred to the material witness, PW-5. This witness was critical to the case of the prosecution. He, however, turned hostile. In his examination-in-chief, PW-5 stated that at around 4 am his truck was stopped by "sales tax officials at the check post." He then stated that "documents of my truck were not detained by any of the checking officials who had stopped my truck on that day. I will not be able to identify any of the officials who had stopped my truck. I do not know anything more about this case." He was unable to be broken down in his cross-examination by the learned Additional Public Prosecutor ('APP') despite being confronted with the fact that his previous statement was wholly contrary. The learned trial Court opined that since the report of PW-1 remained unchallenged, it proved that the truck was intercepted not by the sales tax officials but by the enforcement staff of DTA and therefore, it stood proved that on 28<sup>th</sup> November 1994, in the early morning, the truck driven by PW-5 was in fact intercepted by the enforcement staff at Punjabi Bagh Club and was taken for weighing to Nav Bharat Dharm Kanta. The mere fact that the truck was stopped on the ring road at Punjabi Bagh and was taken for weighing at Nav Bharat Dharam Kanta by some member of the enforcement team on duty at that time did not prove the charges as framed. Strangely, the learned trial Court has opined that since PW-5 was confronted with his previous statement

during his cross-examination his 'exculpatory deposition' is liable to be rejected. In the considered view of this Court, despite being confronted with the previous statement, PW-5 stuck to his stand in the cross-examination that his truck had not been intercepted by the enforcement officials and that the documents of the truck were not detained by any of them. This evidence cannot be brushed aside by holding that this exculpatory deposition of the PW-3 is liable to be rejected. It was incumbent on the prosecution to prove the charge that PW-5 was asked by SI Inder Singh Bisht to pay Rs. 200 as illegal gratification. There was no substantive evidence to prove the said charge. The learned trial Court was clearly in error in simply rejecting the deposition of PW-5 after he was declared hostile.

31. The evidence of PW-6, Khem Singh Rana, was discussed next by the trial Court. He was the Manager of BIC. He only stated that PW-5 told him that the checking staff of STA Janak Puri had taken the *bulky* and other documents of the truck. The Court has perused the deposition of PW-6. The learned APP declared him as hostile when he deposed that when PW-13 went with PW-5 to get the papers back, PW-6 did not accompany him. In his cross-examination by the learned APP, PW-6 stated that the police had not recorded his statement. He denied having made the statement marked 'B'. He denied taking PW-5 to transport authority Janak Puri despite being confronted with mark 'B' again. The second important witness of the prosecution, PW-6 also did not support the case of the prosecution.

32. Strangely, only because PW-6 exculpated the accused, the learned trial Court held that his deposition is liable to be ‘discarded’. It was impermissible for the learned trial Court to discard the evidence of a hostile witness without anything more. The law is settled that while the evidence of the hostile witness may not be rejected in *toto* it will have to be corroborated by other independent witnesses to the extent that any part of the statement supports the case of the prosecution. In the present case no part of the statement of PW-5 or PW-6 can be said to support the case of the prosecution as regards demand of illegal gratification by the public servant accused from PW-5.

33. The learned trial Court next turned to the deposition of PW13. The relevant portion of deposition is that upon reaching his office at 10 am on 29<sup>th</sup> November 1994, PW-5 told him that on 29<sup>th</sup> November 1994 STA staff impounded the truck at Punjabi Bagh. PW-13 does not state anything about PW-5 telling him that SI Inder Singh Bisht demanded any illegal gratification. Even when PW-13 talks of what happened on 29<sup>th</sup> November 1994, he does not state that SI Inder Singh Bisht demanded any bribe from him. PW-13 clearly stated that SI Inder Singh Bisht told him that the documents impounded might be available in the transport office and that the documents would be returned on being traced out. Then there is a specific question put to this witness proposed by the Court to which he answered as under:

“Q. Did you get a feeling that the Transport officials were intentionally harassing you by not returning your documents?

Ans: At that time I had felt so. However, when despite their best efforts they could not trace out the documents my impression changed.”

34. PW-13 again was declared as hostile by the learned APP because he also failed to support the case against the set of accused regarding purchase of immunity cards from M/s. Okara Batteries.

35. The learned trial Court appears to have considered whether the deposition of PW-13 as to what was told by PW-5 could be taken into consideration since the defence counsel objected to these statements as being hearsay. It must be at the outset noticed that there is nothing in the deposition of PW-13 to the effect that PW-5 told him about SI Inder Singh Bisht demanding any illegal gratification from him. The learned trial Court appears to have inferred from the conduct of PW-13 going to the transport office for getting the papers of the truck back from the enforcement staff that what was told to him by PW-5 was true. The learned trial Court then referred to the decision of the Supreme Court in *Firozuddin Basheeruddin v. State of Kerala 2001 SCC (Crl) 1341* where an observation was made to the effect that “despite the unreliability of hearsay it is admissible in conspiracy prosecution.”

36. The learned trial Court appears to have completely overlooked the fact that the charge against the public servant accused about entering into a criminal conspiracy to collect illegal gratification from several truck drivers/transporters was vague and not proved at the trial. The second charge

about SI Inder Singh Bisht demanding a sum of Rs. 200 from PW-5 for releasing the documents of the truck was also not proved. The evidence of PWs-3, 5, 6 and 13 failed to prove the case of the prosecution.

37. The conclusion of the learned trial Court that the evidence of these witnesses proved that the documents of the truck were retained by the enforcement staff does not flow from the evidence of these witnesses at all. The Court fails to understand how the learned trial Court concluded that the evidence of PW-3, PW-5, PW-6 and PW-13 proved 'beyond reasonable doubt' that the enforcement staff, on duty on 28<sup>th</sup> November 1994 on ring road at Punjabi Bagh from 4 am to 8 am, had seized the documents of the truck and that these documents also included the bulky of the loaded goods. The Court is of the considered view that the conclusion of the learned trial Court is not based on evidence and cannot be sustained in law.

38. The learned trial Court next turned to the practice of issue of cards from the office of 'Okara Batteries'. The key witness here was PW-12 who again turned hostile and failed to support the case of the prosecution. It must be remembered that PW-12 alone went to the office of Okara Batteries for purchasing the two immunity cards. It must be recalled that PW-13 also did not support the case of the prosecution regarding purchase of immunity cards. He also denied that he along with PW-12 and the two LCs went to purchase the said immunity cards.

39. The Court has carefully perused the evidence of PW-12. It is plain that he turned hostile and was cross-examined by learned APP. PW-12 clearly stated that the previous statements made by him marked as PW-12/A and PW-12/B were never made by him to the police. There is nothing in the deposition of PW-12 that could be stated to support the case of the prosecution. PW-13 too cannot be said to corroborate the evidence of PW-12. Since the LCs themselves did not go to purchase two immunity cards for Rs. 700 and even, according to the prosecution, it was PW-12 who undertook that exercise, the testimony of LCs and in particular, PW-17 cannot be said to corroborate the evidence of PW-12 and PW-13 on this aspect.

40. One of the specific charges against the non-public servants accused was that they had sold two immunity cards for Rs. 700 to PW-12. PW-12 and PW-13 turned hostile. There is nothing in the report of the LCs either on the public servants or the non-public servants accused being involved in the sale of the immunity cards to truck drivers/transporters. The other charge against the non-public servants accused was regarding criminal conspiracy to compel truck drivers to purchase the immunity cards. The learned trial Court referred to the decision in *M. Narsinga Rao v. State of Andhra Pradesh 2001 (1) RCR (Criminal) 95* to hold that “from the fact that the documents of the truck were illegally retained by the accused public servants, I hold that a presumption can be drawn that these documents were illegal retained by the accused public servants either as gratification or for compelling the transport to pay the illegal gratification.”

41. The learned trial Court held that documents of the truck impounded by the enforcement staff constituted gratification within the meaning of Section 7 PC Act. In the considered view of the Court, the learned trial Court misunderstood what constitutes gratification in the context of the present case. In terms of Explanation (b) to Section 7 of the PC Act ‘gratification’ is not restricted to pecuniary gratification. However, ‘gratification’ in a non-pecuniary context will have to be construed to be something of value to the person seeking illegal gratification. In the context of the present case, however, the case of the prosecution clearly was that the illegal gratification sought by the accused was in the form of money. In other words, the case of the prosecution was that the documents of the truck and the goods were being retained by the accused and they were demanding illegal gratification in the form of money for their release.

42. Relying on the decisions in *State of Madhya Pradesh v. Awadh Kishore Gupta 2003 X AD (SC) 170*, and *State of Andhra Pradesh v. C. Uma Maheshwara Rao 2004 V AD (SC) 176*, the learned trial Court held that this Court can “presume under Section 20 (1) PC Act that the documents of the truck were illegally retained by accused public servants as a motive or reward for obtaining Rs. 200 from driver Balbir Singh as entry charges or to compel the transporter to obtain the monthly immunity and illegal retention of these documents in the discharge of their duties as public servants was a gratification other than legal remuneration as driver Balbir Singh did not pay Rs. 200 as entry charges to the enforcement team headed by accused SI Inder Singh and also because he did not produce the immunity card that was issued by Okara Batteries, Roshanara Road.”

43. There was no occasion for the learned trial Court to invoke Section 20 (1) PC Act when neither the demand for illegal gratification, nor the acceptance of any money by any of the accused was proved by the prosecution. Also, there was no charge against any of the public servants accused about them compelling the transporters/drivers to obtain monthly immunity cards. Therefore, there was no application of mind by the learned trial Court as to what the charges framed against the accused were.

44. As far as Appellant Raminder Singh was concerned, with PW-12 turning hostile the question of the charges being held to be proved against him beyond all reasonable doubt did not arise. The numbers mentioned in the two seized cards were not of trucks. They were never shown to have been used by truck drivers or transporters for avoiding harassment. In other words it was never proved that they were in fact 'immunity' cards.

45. In the present case, the evidence brought on record by the prosecution miserably failed to prove the charges against the accused. Consequently, this Court holds that neither against the public servants nor against the non-public servants have any of the charges framed by the learned trial Court been proved beyond all reasonable doubt by the prosecution. The accused were entitled to the benefit of doubt and to be acquitted of the charges framed against them.

46. Accordingly, the impugned judgment of the learned trial Court dated 27<sup>th</sup> November 2007 and the order on sentence dated 30<sup>th</sup> November 2007 are hereby set aside.

47. The Appellants are acquitted of the offences with which they were charged.

48. The appeals are allowed in the above terms.

**MARCH 10, 2014**

*Rk*

**S.MURALIDHAR, J**

