

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

Reserved on: 06.02.2014
% Date of Decision: 11.02.2014

+ CRL.A. 101 of 2010 & CRL. A. 102 of 2010

SANJEEV KUMAR DUBEY Appellant
Through: Mr. K.B. Andley, Sr. Adv. with
Mr. M.L. Yadav, Adv.

versus

STATE OF DELHI Respondent
Through: Mr. Feroz Khan Ghazi, APP.
CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGEMENT

V.K.JAIN, J.

On 8.2.2000, the complainant – Mr. Rishi Prakash came to the office of Anti Corruption Branch and made a complaint, alleging therein that he had submitted an application to the Transport Department, for obtaining clearance of road tax in respect of bus number DBP 2042 and was given a receipt, requiring him to collect the said report on 30.1.2000. He further alleged that when he went to the aforesaid office for taking delivery of the clearance report from the appellant S.K. Dubey, who was the clerk concerned with delivery of the clearance receipt, he asked for bribe of Rs.1,000/-. He also told the complainant that if his demand is not fulfilled, objections would be raised on the application submitted by him. Since the clearance report was not furnished despite repeated visits by the complainant, he again met the appellant on 7.2.2000 and agreed to pay a sum of Rs.1,000/- to him. The

appellant asked him to bring the bribe money at 12 noon on 8.2.2000 and take the clearance report.

After recording the complaint in the presence of a *panch* witness Mr. Pawan Kumar, an LDC in Social Welfare Department, Department of Govt. of Delhi, currency notes of Rs.1,000/-, which the complainant had brought with him were treated with phenolphthalein powder and the *panch* witness was made to touch them. Then, on hand wash of the *panch* witness being taken, the solution turned into pink. The currency notes treated with Phenolphthalein powder were then handed back to the complainant, who was instructed to keep the *panch* witness with him and talk to the appellant in such a manner that the *panch* witness was able to hear the conversation. The *panch* witness was instructed to hear the conversation, and give a pre-decided signal only on being satisfied that the bribe was being taken by the appellant.

The raiding party, which included the complainant and the *panch* witness then reached Rajpur Road near the office of the Transport Department. The vehicle was parked at some distance from the office and the complainant as well as the *panch* witness went to the said office. After some time, on noticing a pre-decided signal given by the *panch* witness, the police officers including Inspector M.S. Sangar reached the cabin of the appellant in the office of Transport Department and sought to search the appellant. He was told that if he so wanted, he could search the members of the raiding party, including the *panch* witness. The appellant, however, declined to search them and admitted his mistake. The *panch* witness was then asked to take out the bribe money from the pocket of the jacket which the appellant was wearing at that time. The *panch* witness then took out the two currency notes of Rs.500/- each

from the pocket of the jacket of the appellant. On comparison with the numbers already noted by Anti Corruption Branch, they were found to be the same. The notes were then duly seized in the presence of the witnesses. On right hand of the appellant being washed in the sodium carbonate solution, turned into pink. This was followed by wash of the left hand of the appellant and on such wash also, the solution turned into pink. The same was the position when wash of the pocket of the jacket of the appellant was taken in sodium carbonate solution.

2. This is also the case of the prosecution that after completion of formalities relating to the aforesaid raid, when Inspector M.S. Sangar was present in his cabin, the appellant came there along with SI S.L. Pandey and asked him to finish the case against him. He also offered to arrange money within half an hour. The aforesaid Inspector, however, declined the offer. The appellant, however, persisted with his request and offered to arrange a sum of Rs.2 lac, out of which Rs. 1 lac was to be paid within half an hour and the balance amount by evening. The appellant asked his colleague Mr. Harjit Singh who at that time was present outside the cabin to immediately arrange a sum of Rs.1 lac through Mr. Negi. Inspector M.S. Sangar thereupon left the cabin and brought the matter to the notice of his senior officer - ACP Dal Chand. After recording of the complaint made by Inspector M.S. Sangar, the police officials, along with a *panch* witness Jagdish Kumar, waited for the appellant in the cabin. After about five minutes, the appellant, accompanied by S.I. S.L. Pandey, entered the cabin and requested the complainant to wait for some more time for his man to reach there with money. Inspector M.S. Sangar, again tried to persuade the appellant, saying that the case against him could not be finished and whatever he

was doing was wrong. After about 10 minutes, one person, whose name later on came to be known as V.S. Negi, entered the cabin and handed over an envelope to the appellant saying that the said envelope contained Rs. 1,00,000/-. The appellant took out currency notes from the aforesaid envelope and after counting, kept them back in the same envelope. He then offered the same to Inspector MS Sangar, simultaneously assuring him that the rest of the amount will be paid by evening. Inspector MS Sangar declined to accept the bribe money, but the appellant persisted in his efforts. At this stage, the Investigating Officer disclosed his identity to the appellant and the *panch* witness was instructed to take out currency from the envelope in the hand of the appellant. The envelope was found to contain cash amounting to Rs 1,00,000/-, which was seized after it had been duly sealed.

3. The appellant was charge-sheeted separately, under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act') for the first offence and under Section 7 read with Section 12 of the Act for offering a sum of Rs 1,00,000/- to Inspector MS Sangar. Since the appellant pleaded not guilty to the charges under Sections 7 & 13(1)(d) read with Section 13(2) of the Act for demanding and accepting bribe from the complainant, Rishi Prakash as also to the charge under Section 7 read with Section 12 of the Act for offering bribe to Inspector M.S. Sangar, the prosecution examined eleven (11) witness in the first case which was registered vide FIR No.7/2000 and six (6) witnesses were examined in the second case which was registered vide FIR No.8/2000.

4. Vide impugned judgement dated 24.12.2009 and order on sentence dated 11.1.2010 passed in the first case, the appellant was

convicted under Section 7 read with Section 12 and under Section 13(1)(d) read with Section 13(2) of the Act and was sentenced to undergo RI for one (1) year each and pay fine of Rs.5,000/- each or to undergo SI for one (1) month each in default, on both the counts.

Vide impugned judgement dated 13.1.2010 and order on sentence dated 18.1.2010 passed in the second case, the appellant was convicted under Section 7 read with Section 12 of the Act and was sentenced to undergo RI for one (1) year and to pay fine of Rs.5,000/- or to undergo SI for one (1) month in default.

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5. The complainant in this case, Shri Rishi Prakash Aggarwal, came in the witness box as PW6 and stated that he was doing liaison work for M/s. Garg Motors, owned by Shri Inder Prakash Garg (PW11), taking care of the work such as permit renewal, obtaining fitness, depositing road tax, etc. M/s. Garg Motors owned a bus No.DBP 2042. In the first week of January, he deposited road tax of the above bus, was issued receipt PW6/A and was asked to come on 13.1.2000 to collect the Clearance Certificate in respect of the road tax of the aforesaid bus. When he went to the Transport Authority on 13.1.2000, the appellant, who was the Counter Clerk, told him that the Clearance Certificate was not ready and he should come after a week. When he again met the appellant after one (1) week, he was asked to come in the next week. The appellant also told him that he would have to continue visiting the Transport Authority but would not get Clearance Certificate, unless money was paid to him. According to the witness since he was fed up with visiting the Transport Authority time and again, he asked the appellant as to how much he would have to pay to him. The appellant

then told him that he would have to pay Rs.1,000/-. When he refused to pay the aforesaid amount, the appellant told him, on 4.2.2000, that he would not get the Clearance Certificate, unless the said amount was paid. He further stated that when he brought the matter to the notice of the bus owner Shri Inder Prakash, he asked him to speak to the officer of the Department, namely Shri A.S. Khullar. When he met Mr. Khullar he assured to get the Clearance Certificate to him, but he could not get the said Certificate. He then went to the Anti Corruption Branch on 8.2.2000 and made the complainant Ex.PW6/B. A Government employee was then summoned by Anti Corruption Branch. He (the complainant) handed over two currency notes in the denomination of Rs.500/- to the police officer who treated them with a chemical and handed them over to him. He then reached the Transport Authority, along with officials of the Anti Corruption Branch and the Government employee who was called there, to accompany him. He went to the counter of Sanjeev Dubey and sought Clearance Certificate of the bus. When the appellant asked him whether he had brought Rs.1000/-, he told the appellant that he had brought the said amount. The complainant then told him (the appellant) that he could take the money and hand over the Clearance Certificate. The appellant asked him to get inside his office. The Government official accompanying the complainant also went inside along with him. The appellant then left his counter, went to the room of the Assistant Accounts Officer, took out a computer print without depositing the prescribed Government fee of Rs.20/- and got the said print out signed from the Assistant Accounts Officer and another officer of the Transport Authority. The appellant then put his signatures on the document and demanded Rs.1,000/- from him. He took out the

money from the right pocket of his jacket and handed it over to the appellant, who kept it in the pocket of his jacket and then handed over the print out Ex.PW6/C to him. On signal having been given by him the members of the raiding party reached there. By that time, the appellant had left the room of the Assistant Accounts Officer and had come back to his room. One police officer recovered Rs.1,000/- from the pocket of the jacket which the appellant was wearing and recorded the numbers of the currency notes on a paper and thereafter tallied the same with the numbers that had been noted earlier on a paper. Since the numbers tallied, the police officer asked for water to be brought and a bottle containing some chemical was then opened. The hand wash of the appellant was taken in the solution due to which its colour turned red. The same was the position when the wash of the pocket of the jacket of the appellant was taken in the solution. He also stated though the Tax Clearance Certificate had been prepared on 3.2.2000, it was not delivered by the appellant. According to the witness some writing work was done by the police on the spot and some work was done in the office of the Anti Corruption Branch.

6. PW7 Praveen Kumar is the *panch* witness in this case. He stated that on 8.2.2000, he was on duty in the office of the Anti Corruption Branch. He further stated that the statement of Shri Rishi Prakash was recorded there and was signed by him at point 'A', Rishi Prakash produced two currency notes of Rs.500/- which were treated with some powder and he was asked to touch those notes. Thereafter on his hand wash being taken the colour turned into red. He was directed to remain associated with the complainant, hear the conversation and give a signal after the person concerned accepted the bribe money. He further stated

that after reaching the Transport Authority with police officials he accompanied the complainant to the said office and found the appellant Sanjeev Dubey present in a cabin in that room. When the complainant asked the appellant as to whether his work had been done, the appellant replied in the affirmative and then the complainant passed on the money which the appellants had handed over to him. On his giving pre-decided signal to the raiding party, the police officers entered the cabin of the appellant. A Police Inspector searched the jacket of the appellant and recovered two currency notes of Rs.500/- from the pocket. Hand wash of the appellant was then taken and on such wash the colour of the solution changed to red. The same was the position when wash of the pocket of the jacket of the appellant was taken.

7. PW8 Inspector M.S. Sangar, besides corroborating the deposition of the complainant and the *panch* witness with respect to noting down the numbers of the currency notes, applying phenolphthalein powder on them in the office of the Anti Corruption Branch, making the *panch* witness touch them, taking hand wash of the *panch* witness and reaching the office of the Transport Authority along with them. He further stated that on noticing the pre-decided signal from the *panch* witness he along with the members of the raiding party, reached the cabin of Final Tax Report in ST Office and after disclosing his identity to the appellant, offered his search as well as the search of the members of the raiding party to him. The appellant, however, declined the offer. Thereafter the *panch* witness recovered the currency notes amounting to Rs.1,000/- from the pocket of the jacket of the appellant. The numbers of the said notes were tallied with the numbers recorded in the pre-raid report and were found to be same. Thereafter wash of the hands of the appellant as

well as the pocket of his jacket was taken and the solution turned pink on such wash. He recorded the post-raid proceedings Ex.PW6/E in the presence of the complainant and *panch* witness and obtained their signatures on it. Thereafter Inspector Y.S. Negi was summoned there and the case property was handed over to him for carrying out further investigation in the case.

8. PW1 Shri Virender Singh was posted as the Principal Secretary-cum-Commissioner (Transport) at the relevant time and he granted sanction Ex.PW1/A for prosecution of the appellant. PW11 Shri Inder Prakash, however, did not support the prosecution and stated that he does not know the complainant, Rishi Prakash. He claimed that Rishi Prakash never remained in his service and it was his driver who had deposited the fee for obtaining Road Tax Clearance Report.

9. In his statement under Section 313 Cr.P.C., the appellant denied the allegations against him and claimed that he was not dealing with the receipt and issue of Clearance Certificate. He claimed that Rishi Prakash Aggarwal had personal relations with the Additional Director, A.S. Khullar, and used to threaten all the employees that he would complain to Shri Khullar, in case he was not obliged. He also stated that the proceedings were conducted in the office of Anti Corruption Branch and all the documents were fabricated in that office. According to him the officials of the Transport Department were not happy with the acts and conduct of the then Additional Director and, therefore, he (Additional Director) as well as the complainant and the IO were interested in the success of this case. He also claimed that he had slapped the nephew of the complainant who had then threatened to implicate him in a false case.

10. DW1, Shri Amarnath was posted as the Statistical Assistant in the Transport Office in February, 2000. He stated that the appellant Sanjeev Dubey was working in the Accounts Branch and his job was to prepare the Tax Report only. He maintained that it was he, who used to hand over the reports and deal with the public. However, in the cross-examination he stated that the final tax report used to be signed by him, dealing hand and the Assistant Accounts Officer. He further admitted that Final Tax Report Ex.PW6/C bears the signatures of Sanjeev Dubey at point 'A', besides his own signatures and the signatures of the Assistant Accounts Officer. He also admitted that the appellant used to sit in a separate cabin and he had no personal knowledge about the present case.

11. A careful analysis of the deposition of the complainant Rishi Prakash and the *panch* witness Shri Praveen Kumar would show that they have corroborated each other on the following material aspects of the case:

- i. the complainant Rishi Prakash had gone to the office of the Anti Corruption Branch on 8.2.2000, and had made a complaint alleging demand of Rs.1,000/- as bribe by the appellant for issuing Road Tax Clearance Certificate;
- ii. Two currency notes of Rs.500/- each were produced by the complainant before the officers of the Anti Corruption Branch and after noting down their numbers in the pre-raid report, those notes were treated with a powder and thereafter the *panch* witness was made to touch those currency notes. On hand wash of the *panch* witness being taken, the solution turned pink, thereby confirming the application of phenolphthalein powder on the said notes.

iii. The currency notes treated with phenolphthalein powder were returned to the complainant and thereafter the complainant as well as the *panch* witness accompanied the officers of the Anti Corruption Branch to the office of the Transport Authority at Rajpur Road.

iv. The appellant Sanjeev Dubey was present in his cabin in the office of the Transport Authority when the appellant and the *panch* witness reached there.

v. The appellant told the complainant, on being enquired by him that his work had been done and then accepted the currency notes from him.

vi. The currency notes were taken out from the pocket of the jacket of the appellant, though according to the complainant in the examination-in-chief and the *panch* witness, it was the police officer who had taken out the currency notes from the pocket of the jacket whereas according to the police officer and as per deposition of the complainant in his cross-examination, the currency notes were taken out by the *panch* witness.

vii. The wash of the hands of the appellant as well of the pocket of the jacket was taken and on such wash being taken the colour of the solution turned pink, thereby showing that the appellant had touched the currency notes which the officers of the Anti Corruption Branch had treated with phenolphthalein powder and had then had returned to the complainant. It also proves that after taking currency notes from the complainant, the appellant had kept them in the pocket of his jacket.

12. The depositions of the complainant and the *panch* witness find corroboration with the deposition of Inspector M.S. Sangar in whose presence the *panch* witness took out the money from the pocket of the jacket of the appellant and thereafter on wash of the hands of the

appellant and the pocket of the jacket being taken, the solution had turned into pink.

13. The learned counsel for the appellant drew my attention to the following contradictions:

a. According to the complainant, the appellant demanded money from him in his cabin on 8.2.2000, whereas no such demand was alleged by the *panch* witness.

b. According to the complainant, the appellant was wearing the jacket at the time bribe money was paid to him whereas according to the *panch* witness, the jacket from which the money was recovered was lying on the back of the chair in the cabin.

c. According to the complainant and the *panch* witness the bribe money was taken out from the pocket of the jacket by the police officers whereas according to Inspector M.S. Sangar the bribe money was taken out by the *panch* witness on his instructions.

d. According to the complainant part writing work was done and the wash was taken on the spot whereas according to the *panch* witness the wash was taken and all the papers were prepared in the office of the Anti Corruption Branch

In my view, the contradictions pointed out by the learned defence counsel can be safely attributed to imperfect recollection of an event which took place more than seven (7) years before the complainant and the *panch* witness were examined in the trial court. The courts need to appreciate that a human being is not a machine and, therefore, some variations on issues which do not form core part of the incident witnessed by them, are bound to occur, particularly when the witnesses are examined after a considerable time lag. Such minor contradictions

far from destroying the credibility and reliability of the witnesses would rather show them to be truthful and natural witnesses since it is only in the case of tutored witnesses that the statements flow parrot-like without even natural variations. As noted earlier there is no contradiction in the deposition of the witnesses as regards core part of the case of the prosecution, including, the complainant approaching the appellant in his cabin on 8.2.2000, and giving money to the appellant and recovery of money from the pocket of his jacket, and the solution turning pink on taking the wash of the hands and the jacket of the appellant, thereby proving that the currency notes treated by the officers of the Anti Corruption Branch with phenolphthalein powder had come into the hands of the appellant and were then kept in the pocket of his jacket. There is no explanation from the appellant as to how the water-like solution, on his hands being washed into it turned into pink without his touching the currency notes which the officers of the Anti Corruption Branch had returned back to the complainant after treating them with phenolphthalein powder and noting down their serial numbers. Similarly there is no explanation from the appellant as to how the solution turned into pink when the wash of the pocket of his jacket was taken. He has simply denied his hands being washed and the solution turning into pink. The inevitable inference, therefore, would be that the appellant had first accepted the currency notes from the complainant and then kept them in the pocket of his jacket.

14. This is not the case of the appellant that the jacket seized by the police did not belong to him or that there was no jacket in his cabin. No such suggestion was given by him to any of the witnesses. Even otherwise, the jacket was seized from the cabin which the appellant was

occupying in the office of the Transport Authority and since the appellant does not claim that the aforesaid jacket belonged to some other person there is hardly any escape from the conclusion that the said jacket belonged only to him. Even the *panch* witness clearly stated that the jacket from which cash was recovered belonged to the appellant.

15. This is not the case of the appellant that the complainant or the *panch* witness had stuffed currency notes treated with phenolphthalein powder into the pocket of his jacket. Even otherwise, the appellant would never have allowed either of them to do so in his presence. The mandate to the complainant was to offer the currency notes smeared with phenolphthalein powder to the appellant and the mandate of the *panch* witness was to keep a watch on them. Therefore, had the complainant stuffed notes in the pocket of the jacket of the appellant, that would certainly have been noticed by the *panch* witness and he would have stated so, when he was examined in the court. It has to be kept in mind that *panch* witness in this case was a public servant who was on duty in the office of the Anti Corruption Branch, on the date the raid was organised and even the appellant does not attribute any ill-will or motive to the *panch* witness against him.

16. In M. Narsinga Rai Vs. State of Andhra Pradesh 2001 CrL. L.J. 515, the case of the prosecution was that the appellant before the Supreme Court had accepted currency notes smeared with phenolphthalein powder from the complainant. During trial, neither the complainant nor the Panch Witness supported the prosecution. The Deputy Superintendent of Police who conducted the raid told the court that when the appellant was caught red handed with those currency notes, he never demurred to him that those notes were received by him.

The defence taken by the appellant during trial was that the currency notes were stuffed into his pocket. The Supreme Court in these circumstance felt that the story of stuffing of currency notes into the pocket of the appellant had been concocted by him after a period of four years when he faced trial in the court. In the present case also there is no evidence that when the currency notes were taken out from the pocket of the jacket of the appellant he claimed that these currency notes had been kept by someone in his pocket. The decision in the case of M.Narsinga Rao (supra) was followed by the Supreme Court in B.Noha vs. State of Kerala and Anr. (2006) 12 SCC 277.

In Hazari Lal vs. State, (1980) 2 SCC 390, one of the Panch Witnesses was not examined and other one was treated as hostile. The complainant in that case also did not support the prosecution and claimed that it was one Hawaldar and not the appellant who had demanded bribe and that, in fact, the appellant had refused to receive the money when offered by him and had jerked his hand, as a result of which, notes came to be flung across the wall into the neighbouring room from where the notes were recovered by the Inspector. Repelling the contention that acceptance of money by the appellant had not been proved, it was held by the Supreme Court that it is not necessary that the passing of money should be proved by direct evidence and it may also be proved by circumstantial evidence. Since the police officer had testified that the appellant had taken out the currency notes from his pocket and flung them across the wall, the Court held that it could be presumed that he had obtained that money from the complainant. The evidence against the appellant is much stronger, since the complainant as well as the *panch* witness have deposed against him.

17. As noted earlier, the complainant specifically stated that the appellant had demanded Rs.1,000/- from him when he approached him in his cabin on 8.2.2000. Even in the absence of corroboration from the *panch* witness, I see no reason to disbelieve the deposition of the complainant in this regard. Though the case of the appellant in his statement under Section 313 Cr.P.C. is that the complainant was annoyed with him on account of his having slapped his nephew, no such suggestion was given by him to the complainant when he came in the witness box. Moreover there is no reliable evidence on record to substantiate the plea taken by the appellant. There is no evidence of his having reported the alleged threat to the police, or to his senior officers. It has also come in the statement of the appellant that the officials of the Transport Authority were unhappy with the then Additional Director, Mr. A.S. Khullar, and the complainant was well-known to Mr. Khullar. However, there is no material on record which would show that the appellant before this Court had strained relations with Mr. A.S. Khullar. Therefore, even if the complainant was close to Mr. Khullar, there could be no reason for Mr. Khullar to implicate the appellant in a false case of bribery using the complainant for this purpose.

18. The following observations made by this Court in Madan Lal Vs. State 2010 (9) AD Delhi 685, with respect to the credibility of the complainant in a trap case are apt for this case as well.

“The courts need to appreciate that the citizens in our country are most of the times reluctant even to lodge a complaint of demand of illegal gratification from them. Most of them pay the illegal gratification either with a view to get done something to which they are otherwise not entitled under the Rules or in order to get their matter

expedited or with a view not to antagonize the public servant dealing with their matter, lest he puts obstacle in their way by taking a view or recording a note unfavourable to them. When a person takes the step of going to the Anti Corruption Branch, making a complaint, and getting a trap organized, he knows it very well that it was going to cost him a lot of inconvenience and harassment. Firstly, he has to visit the office of Anti Corruption Branch and pay the bribe money from his pocket. He has to complete a number of formalities in the office of Anti Corruption Branch and then accompany the officials constituting the raiding party to the place of the accused. He then has to visit the office of the Anti Corruption Branch in connection with the investigation of the case and thereafter he has to attend the court on a number of occasions. While doing all this, the complainant has to necessarily remain away from the work or business in which he is engaged and thereby he sacrifices a lot of his precious time and possibly also the money which he could be earning utilizing that time. He has to withstand a grilling cross-examination at the hands of the defence counsel and also face the animosity of not only the public servant got trapped by him but also of his colleagues, who will be antagonized with him, on account of his getting a colleague of theirs trapped for accepting bribe. A person making complaint against a public servant knows it very well that in the department of the accused, no one may like to deal with him in future and in fact the colleagues of the accused are only likely to put obstacles in the work which he may have in the department. Therefore, most of the time, a person, from whom bribe is demanded, either pays up the money or he simply withdraws, instead of reporting the matter to the Anti Corruption Branch and going to the extent of being member of a

raiding party. It is only in extreme cases where a citizen has a strong feeling of having been wronged or where he is so much conscious of his rights that instead of keeping silent or paying money, he wants a bribe seeker to be punished that he goes to the Anti Corruption Branch, make a complaint and then follows that complaint to its logical conclusion. Ordinarily the testimony of the complainant need to be believed unless there are strong and compelling reasons creating serious doubt on the truthfulness of his testimony.”

19. In the present case, the appellant demanded money from the complainant firstly when he approached him for delivery of the road tax clearance certificate and then in his cabin on 8.2.2000, and, therefore, there is direct evidence of demand of bribe. The court is statutorily required, by Section 20 of the Act, to presume that the appellant had accepted this money as a motive or reward for doing an official act or for showing or forbearing to show, in the exercise of his official functions, favour to the complainant. Though the presumption under Section 20 of the Act is rebuttable, the appellant has not made any such attempt. He does not claim that the currency notes were accepted by him not as a motive or reward, but in some other connection. His claim is that the currency notes were, in fact, never accepted by him.

20. In Raghubir Singh vs. State of Haryana, (1974) 4 SCC 560, the appellant, an Assistant Station Master, was found in possession of marked currency notes given to him by a passenger, whose bedding has been detained by them. It was held by the Supreme Court his being caught red-handed was a case of *res ipsa loquitur* as the very things speaks for itself in such circumstances.

In Madhukar Bhaskarrao Joshi vs. State of Maharashtra, 2001 CrL.L.J. 175, the Supreme Court rejected the contention that the presumption could be drawn only on the prosecution, establishing that gratification was paid or accepted by the public servant and not merely from its proving that he was found in possession of the currency notes, smeared with phenolphthalein powder. Rejecting the contention, the Court, inter alia, held as under:

“The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing." If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.”

21. It was contended by the learned counsel for the appellant that since PW11 Shri Inder Prakash, owner of the bus, has denied engaging the services of the appellant, there could be no occasion for him to apply to the Transport Authority for grant of the Road Tax Clearance Certificate. However, in my view, the testimony of PW11 Inder Prakash in this regard stands falsified not only from the deposition of the complainant but also from the documentary evidence on record. Ex.PW6/A is the receipt issued by the Transport Department in respect of vehicle No.DBP 2042. This document has been seized by the

Investigating Officer from the complainant Shri Rishi Prakash Aggarwal as would be seen from the seizure memo Ex.PW6/K. Had he not applied for the Road Tax Clearance Certificate in respect of bus No.DBP 2042, the aforesaid receipt would not have been in his possession. Ex.PW6/C is the Final Tax Clearance Report in respect of bus No.DBP 2042 which bears signatures of the appellant at point 'A'. This is not the case of the appellant, nor did Shri Inder Prakash Garg claim that either Shri Inder Prakash Garg or some other person on his behalf had applied for clearance in respect of this Bus. This document leaves no reasonable doubt that the appellant Sanjeev Kumar was also associated with the work of issue of Final Tax Clearance Report in respect of vehicles. It further shows that the aforesaid report used to be prepared by him, checked by Shri Amarnath and then signed by the AAO, Mr. Sunder Lal. The diary number noted on this document is 6290. The same is the number noted on the receipt Ex.PW6/A, which clearly shows that the aforesaid report was prepared pursuant to the receipt Ex.PW6/A which was delivered to the complainant when he applied for issue of the Clearance Certificate. Therefore, no reliance upon the testimony of Mr. Inder Prakash can be placed by the court.

22. Section 13(1)(d) of the PC Act to the extent it is relevant for the present case, provides that a person is said to commit criminal misconduct, inter alia, if he (i) by corrupt or illegal means or (ii) by abusing his position as a public servant obtains himself any pecuniary advantage.

The expression "corrupt or illegal means" has not been defined in the Act. Illegal would obviously mean something which the law prohibits. The definition of the expression 'corrupt' in the Shorter

Oxford Dictionary includes something influenced by bribery. This expression would also include something which is morally unsound, dishonest, depraved or pervert. Therefore, accepting money as bribe would certainly amount to use of corrupt means. Since taking or attempting to take bribe is prohibited by law, such an act would also amount to use of illegal means.

23. For the reasons stated hereinabove, I am of the considered view that the appellant has rightly been convicted under Section 7 of the Act for demanding and accepting illegal gratification from the complainant as motive or rewards for issuing the Road Tax Clearance Certificate in respect of bus No.DBP 2042. Since the appellant also accepted a sum of Rs.1,000/- from the complainant by illegal and corrupt and illegal means as also by abusing his position as public servant, he has rightly been convicted under Section 13(1)(d) read with Section 13(2) of the Act. Since the minimum sentence prescribed for the offence punishable under Section 7 of the Act is six (6) months and the minimum sentence prescribed for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Act is one (1) year, and the amount of fine imposed on him is very modest, there is no scope for interfering with the sentence awarded to the appellant in the first case.

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24. Shri S.N. Pandey, Sub-Inspector, who was posted in Anti Corruption Branch on 08.02.2000, was the first witness to be examined in this case. He stated that after completing the post-raid formalities, custody of the appellant was entrusted to him. While in his custody, the appellant told him that he wanted to talk to Inspector Sangar who at that time was sitting in the cabin of the appellant. He then took the appellant

to Inspector M.S. Sangar, where the appellant requested him to hush up the case by closing it and also stated that he was ready to spend any amount for this purpose. When Inspector M.S. Sangar told him that the case could not be closed, the appellant touched his feet and persisted in his request. Inspector M.S. Sangar asked him to take the appellant away, and when he was about to take him out of the cabin, the appellant closed the door and bolted it from inside. He then asked someone by the name Harjit to bring the money. When the Inspector told him that giving and taking of bribe was an offence, the appellant said that irrespective of the result, he would pay Rs 1,00,000/- at that very time and another Rs. 1,00,000/- by evening. Thereafter, Inspector Sangar informed his senior officers about it and after some time an official reached there. The appellant also came to that room and in the presence of the members of the Anti Corruption Branch, he told Inspector Sangar that the money was being brought which he should take and close the case. Inspector Sangar, however, again refused. After about 5-10 minutes, one Sikh gentleman came there and handed over an envelope to the appellant. He looked inside the envelope and then forcibly gave it to Inspector Sangar saying that he should take it. At this stage, Inspector V.P. Singh disclosed his identity to the appellant. The money in the envelope was counted by the panch witness Jagdish and was found to be Rs. 1,00,000/-, which was seized vide memo Ex. PW-1/A.

25. Inspector M.S. Sangar came in the witness box as PW-2 and stated that after conducting the raid proceedings in the case registered vide FIR No. 7/2000, he was sitting in the cabin of the appellant, when the appellant along with SI S.N. Pandey came to the said cabin and requested him to hush up the case. Despite his telling him that it was an

offence and he did not want any money, the appellant kept on insisting. He then directed SI S.N. Pandey to take the appellant out of the cabin. At this stage, the appellant bolted the cabin from inside and told him that he was ready to pay Rs 2,00,000/- to him, out of which Rs.1,00,000/- would be paid within half an hour and the remaining Rs.1,00,000/- would be paid by evening. According to the witness, despite counselling by him, the appellant persisted with his request, whereupon he asked SI S. N. Pandey to take him out of the cabin. The appellant opened the cabin and asked a person named Harjit, who was standing outside the cabin to ask Negi (some other person), to bring Rs.1,00,000/- and thereafter he went out of the cabin along with SI S.N. Pandey. The witness further stated that he informed his seniors in this regard and after some time Inspector V.P. Singh reached there, along with a public witness Jagdish and his statement Ex. PW 2/A was recorded in the presence of the public witness. After about five minutes, the appellant again came to that cabin along with SI S.N. Pandey and in the presence of Inspector V.P. Singh and witness Jagdish asked him to wait for some time, since his man was about to bring money. The witness claimed that he again warned the appellant that he was doing something wrong which amounted to an offence. The witness further stated that within ten minutes, a Sikh gentleman came there, opened the cabin and handed over a yellow envelope to the appellant saying that it contained Rs. 1,00,000/-. The appellant told them that the name of the Sikh gentleman was Harjit. He counted the money and again kept it in the envelope. Thereafter, he extended the envelope towards him. At this stage, Inspector V.P. Singh having seen the appellant offering him the bribe money, disclosed his identity to the appellant and then asked the

panch witness to take over the envelope containing money from the appellant. The cash inside the envelope, on counting, was found to Rs 1,00,000/- which was seized after the envelope containing the currency notes had been sealed.

26. The panch witness Jagdish came in the witness box as PW-4 and stated that on 08.02.2000, he was on duty as a panch witness in Anti Corruption Branch. He further stated that on that day at about 1.30-1.45 PM, he accompanied the raiding party to the office of STA at Rajpur Road, New Delhi, where he was told by Inspector Sangar that the appellant had been caught red handed, while accepting illegal gratification of Rs 1,00,000/- and he had offered Rs. 2,00,000/- to the officials of Anti Corruption Branch for letting him scot free. The witness claimed that he thereafter accompanied Inspector Sangar to the cabin at about 2.45 PM. The appellant entered the cabin and requested Inspector Sangar to wait for a while, since a man with money would be coming for giving the said money to him, for letting him scot free in the case. After a while, one Sikh came inside the cabin of the appellant and handed over a bag saying that it contained Rs 1,00,000/- and the remaining amount would also be arranged. The appellant took out the money from the bag and tried it to give it to Inspector Sangar who refused to take it. Thereafter, on asking of another Inspector, he took the envelope containing that money and on counting found that it contained Rs 1,00,000/- in currency of various denominations. The said currency notes were thereafter seized after sealing the envelope.

27. PW-5 V.S. Negi, however, did not support the prosecution and stated that neither Harjit Singh came to his seat on 08.02.2000 nor did he ask him to arrange Rs 1,00,000/- for the appellant.

Harjit Singh came in the witness box as PW-3, but did not support the prosecution. He claimed that on 08.02.2000, he was not present in the cabin of the appellant when he was apprehended by the officials of Anti Corruption Branch. He denied that the appellant had asked him to bring Rs 1,00,000/- from Mr Negi.

28. PW-6 Shri V.P. Singh stated that on 08.02.2000, he was posted as Inspector in Anti Corruption Branch and on the aforesaid date, he along with other officials of Anti Corruption Branch went to the office of STA and recorded the statement of Inspector Sangar Ex.PW-2/A in the presence of the witness Jagdish. He then accompanied Inspector M.S. Sangar inside a room. After some time, SI S.N. Pandey brought the appellant Sanjeev Dubey, present in the Court and left after leaving him in that room. After some time, one Sikh gentleman came inside the room and gave something wrapped in a polythene envelope to the appellant, who opened the envelope and checked its contents. Thereafter, he offered the contents inside the envelope to Inspector Sangar saying that the envelope contained Rs. 1,00,000/- and rest of the money would be arranged by evening. Inspector Sangar, however, refused to take the money, despite the appellant insisting upon his accepting the same. At that stage, he (the witness) intervened, disclosed his identity to the appellant and asked the panch witness to take the polythene given by the appellant to Inspector Sangar. The envelope, on

checking, was found to contain currency notes amounting to Rs.1,00,000/-, which was seized after sealing the envelope.

29. In his statement under Section 313 Cr. P.C., the appellant denied the allegations against him and claimed that the money was planted on him to make out a false case at the instance of the complainant in FIR No. 7/2000 as well as Inspector M.S. Sangar. He also stated that Inspector Sangar was arrested by CBI for accepting a bribe of Rs 6,000/- and is still facing trial.

30. As noted earlier, according to PW-1 S.I. S.N. Pandey, the custody of the appellant was given to him, after he had been arrested in FIR No. 7/2000. During cross-examination of the witness, no suggestion to the contrary was given to him, meaning thereby that the appellant does not dispute that he was in custody of SI S.N. Pandey, after he had been arrested in the case registered vide FIR No. 7/2000. During cross-examination of SI S.N. Pandey, no suggestion was given to him that the appellant had not expressed desire to speak to Inspector Sangar or that he had not taken the appellant to the cabin in which the aforesaid Inspector was sitting. Thus, it stands established from the deposition of this witness that the appellant wanted to speak to Inspector Sangar and for this purpose had prevailed over SI Pandey to take him to the cabin in which the officer was sitting, in connection with investigation of the case registered vide FIR No. 7/2000. The appellant has not told the Court as to why he wanted to speak to Inspector M.S. Sangar and why he had gone to the cabin in which he was sitting.

31. It has come in the deposition of PW-4 Jagdish Kumar, who is a public servant and was on duty in the office of the Anti Corruption

Branch on that day that he was taken to the office of STA at Rajpur Road, after Inspector Sangar has complained to his superiors with respect to the bribe offered to him by the appellant. Jagdish being a public servant, acting in discharge of his official duties, had no reason to depose falsely against the appellant and implicate him in false case of offering bribe to a police officer. I, therefore, see no reason to disbelieve his deposition with respect to the appellant entering the cabin in which Inspector M.S. Sangar was present along with the witness and Inspector V.P. Singh, asking Inspector Sangar to wait since his man was about to come with money for him and then offering the cash amounting to Rs 1,00,000/- kept in a bag which was brought to the cabin by one Sikh gentleman, to Inspector M.S. Sangar, as a bribe, for letting him off in the corruption case in which he was caught red handed. In fact, the deposition of this witness itself is sufficient to prove the charge framed against the appellant though his deposition finds ample corroboration from PW-2 Inspector M.S. Sangar and PW-6 ACP V.P. Singh, who at that time was holding the position of an Inspector in the Anti Corruption Branch. It has come in the deposition of Inspector M.S. Sangar that the appellant had offered bribe of Rs 2,00,000/- to him for letting him off in the case in which he was caught red handed, while taking bribe from the complainant in that case. There could be no reason for Inspector M.S. Sangar to implicate the appellant in a false case of offering bribe to him. Inspector M.S. Sangar had nothing to gain by making false allegations of offer of bribe against the appellant. The case of the appellant is that being the Investigating Officer of the case registered vide FIR No. 7/2000, Inspector M.S. Sangar implicated the appellant in this case. I fail to appreciate why Inspector Sangar would try to implicate the

appellant in a false case of offering bribe to him, when he had already arrested him in a case of accepting bribe registered vide FIR No. 7/2000. Moreover, the deposition of Inspector M.S. Sangar finds corroboration not only from the public witness Jagdish, but also from ACP V.P. Singh in whose presence the appellant offered bribe to Inspector Sangar.

32. Though neither PW-3, Harjit Singh, nor PW-5 V.S. Negi has supported the prosecution, that, in my view, of no consequence, particularly in view of the emphatic deposition of PW-4 Jagdish who maintained that one Sikh gentleman had come to the cabin where the appellant was present in the company of Inspector M.S. Sangar and others and had handed over a bag to him, saying simultaneously that the bag contained Rs 1,00,000/-.

33. It is true that PW-4 Jagdish Kumar was not sure as regards the place where the envelope containing the cash was sealed and then seized vide memo Ex.PW-1/A. In his examination-in-chief, he stated that the seized currency was again counted in the office of Anti Corruption Branch and was thereafter put in an envelope, which was sealed, but during cross-examination by the learned Additional PP, he admitted that he was not sure as regards the spot where he had signed the memo, though he admitted that the seal on the envelope was put in the office of STA. He then also admitted that it was due to lapse of time that he had earlier stated that the currency notes were seized and sealed in the office of Anti Corruption Branch, though in fact the sealing and seizure had taken place on the spot. In my view, irrespective of the place where the currency notes were sealed in an envelope, the appellant would be guilty of the offence punishable under Section 7 read with Section 12 of the

Act since he offered bribe to Inspector M.S. Sangar for letting him off in the case in which he was arrested on the allegations of taking bribe, amounting to Rs 1,00,000/-.

34. Though it is somewhat unnatural, that the complainant Inspector repeatedly kept on warning the appellant that he was acting illegally by offering bribe to him, that would have no bearing on the merit of the case, since what is material is the attempt made by the appellant to bribe him, in the presence of witnesses, including PW4 Jagdish.

35. In my view there was nothing unnatural in someone bringing money in the presence of the officers of ACB, since they would be presuming that the appellant had struck a deal with them, and the money was required to honour the deal.

36. It has come in evidence that Inspector Sangar was later arrested by CBI in a case of corruption, but, that, in my view, would be of no consequence, as far as the charge against the appellant is concerned.

37. The Court cannot be oblivious to the fact that the bribe money in this case is not a small amount. It would be difficult for the Court to accept that about 14 years ago, an officer of Anti Corruption Branch, planted Rs. 1,00,000/- from his pocket on the complainant, in order to implicate in a false case of offering bribe. This would be more so when there was no previous enmity or ill-will between the appellant and the Inspector Sangar and the appellant had already been arrested by him in another case of corruption.

38. For the reasons stated hereinabove, I am of the considered view that the appellant has rightly been convicted for the offence for which he

was charged in this case. The sentence awarded to the appellant being quite modest, also does not call for any reduction. The appeal is, therefore, liable to be dismissed.

Order

For the reasons stated hereinabove, both the appeals are hereby dismissed. The appellant is directed to surrender forthwith before the Trial Court to undergo the remaining part of the sentence awarded to him. If he does not surrender forthwith before the Trial Court, the Trial Court shall take steps to procure his presence and commit him to undergo the remaining part of the sentence. LCRs be sent back along with a copy of the judgment. One copy of this judgment be sent to the concerned Jail Superintendent for information.

FEBRUARY 11, 2014
BG/b'nesh

V.K. JAIN, J.