

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

Judgment reserved on :04.02.2014

Judgment delivered on :18.02.2014

+ CRL.A. 16/2006

PREM CHAND Appellant

Through Mr.J.P.Sengh, Sr. Adv. with
Mr.Ravinder Yadav, Adv.

versus

STATE Respondent

Through Ms.Fizani Hussain, APP.

+ CRL.A. 33/2006

MOHD.TAUFIQ Appellant

Through Mr.S.S.Gandhi, Sr. Adv. with
Mr. A.K. Sharma, Adv.

versus

STATE NCT OF DELHI Respondent

Through Ms.Fizani Hussain, APP.

+ CRL.A. 46/2006

PRAMOD KUMAR Appellant

Through Mr.N. Hariharan, Sr. Adv. with
Mr.Varun Deswal, Adv.

versus

STATE THRU NCT OF DELHI Respondent

Through Ms.Fizani Hussain, APP

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The appellants are aggrieved by the impugned judgment and order of sentence dated 17.12.2005 and 19.12.2005 wherein they had been convicted under Section 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the said Act) read with Section 34 of the Indian Penal Code (hereinafter referred to as the IPC) and had been sentenced to undergo RI for a period of 1 year and to a fine of Rs.1000/- in default of payment of fine to undergo SI for one months for the offence under Section 13(1)(d) of the said Act; for the offence under Section 7 of the Said Act read with Section 34 of the IPC they had been sentenced to undergo RI for six months and to a fine of Rs.5000/- in default of payment of fine to undergo SI for 15 days. Both the sentences were to run concurrently. Benefit of Section 428 Cr.P.C. was accorded to the appellant.

2 Version of the prosecution is that all the aforementioned accused persons were beat constables posted at police station Badarpur. Mohd.

Sattar (PW-3) was the complainant; he was selling bags from a rehri in front of police station Badarpur since the last three months; all rehris and squatters had been removed by police officials but thereafter they had re-encroached upon this land. PW-3 had also started squatting by putting his rehri there. Accused person asked him to remove his rehri; he stated that since other persons were allowed to place their reharis he should not be discriminated and should also be permitted to place his rehri at the said place. The accused persons told him that he will have to pay Rs.300/- per month besides another sum of Rs.20/- on every Sunday for the aforesaid privilege. Since PW-3 was poor and had been unemployed for sometime he told them that because of financial stringency he would not be able to honour this demand. He was threatened and abused by them. On 26.9.1998 the aforementioned accused persons again told him to remove his rehri or in the alternate to pay them the bribe money. Since PW-3 could not pay up this amount he was threatened by accused Pramod and Mhod. Taufiq. On 27.9.1998 a demand was made by Mohd. Taufiq and Pramod for money but since PW-3 could not fulfill the demand he prayed for time up to 28.8.1998;

he was threatened that if the money was not paid up he would be implicated in a false case.

3 Complaint was made to the CBI. Pre-trap proceedings were organized. In the pre-trap proceedings Om Prakash Khatri (PW-5) a panchwitness was asked to join. A live demonstration as to how the tainted money would turn pink when coated with phenolphthalein powder and dipped into a solution of sodium carbonate was explained to the members of the raiding party which comprised of PW-3, PW-5, PW-10 and PW-11. It had been explained to the complainant that only on a demand the money would be paid to the accused. Accordingly on the date of the trap which was 28.9.1998 when the complainant along with PW-5 was sitting on his shop in the evening at about 4.30 p.m. Mohd. Taufiq approached him and demanded the bribe money; he was informed that PW-3 had a guest (PW-5). Mohd. Taufiq then walked some distance away where the co-accused Prem Chand and Pramod were standing. PW-5 had been directed to give appointed signal after the money had been received by the accused. PW-3 approached the accused persons where they were standing; demand was made by Pramod;

money was handed over to Mohd. Taufiq; he gestured towards Prem Chand and the money was thereafter accepted by Prem Chand in his right hand and he put into his right pant pocket.

4 Rati Ram (PW-1) and constable Mahinder Singh (PW-2), the then MHCM were witnesses to the link evidence i.e. the deposit of the exhibits which had been taken at the time of the raid i.e. the right hand wash and right pant pocket wash of Prem Chand. PW-2 had deposited these exhibits in the Malkhana and they were sent through inspector Kamal Sapra (PW-13) to the CFSL Chandigarh. The CFSL vide its report Ex.PW-12/D had opined these exhibits as positive for phenolphthalein and sodium carbonate.

5 Sanction for prosecution under Section 19 of the Said Act was obtained vide Ex.PW-6/A and proved in the version of DCP Vivek Gogia (PW-6).

6 In the statement of the accused persons recorded under Section 313 Cr.P.C. they all pleaded innocence stating that they have been falsely implicated in a false case.

Defence sought to be set up was that the complainant had a grudge against the accused persons as he was encroaching on public land and on reprimand he has built up this false case to implicate the accused persons. In defence one witness was produced. Submission in defence was that an FIR under Section 354 IPC had been registered against PW-3 and was being investigated by the police station Badarpur; this was an additional cause of grievance of PW-3 against the accused persons.

7 On behalf of the appellant arguments have been addressed by Senior Counsel Mr.Hariharan. His first argument is bordered on the link evidence. Submission being that as per the version of the prosecution there were four phials which had been taken at the time of raid; two of which comprised of the right hand wash of Prem Chand and two comprised of the right pant pocket of Prem Chand marked as RHW-I, RHW-II, RPPW-I and RPPW-II respectively. Submission being that as is evident from the version of PW-1 the two bottles marked as RHW-I and RPPW-I were kept in the almirah of PW-1 after being sealed with the seal of PHP and the key was kept by PW-1. They were

then sent to the CFSL through PW-13. Attention has also been drawn to the cross-examination of PW-1 wherein he has stated that no Register No.19 was maintained in the Anti Corruption Branch. On this count attention has been drawn to the version of PW-2 who was also posted in the Anti Corruption Branch and had deposed that he had deposited the sample seal with the seal of PSP along with a pant pullanda and entry to the said effect was made in the Register 19. Submission on this count being that PW-1 and PW-2 have given contrary versions as to whether there was a Register No.19 being maintained in the Anti Corruption Branch or not. Further submission on this count being that PW-1 had testified that the articles were sealed with seal of PSP whereas PW-2 has testified the seal was of PHP. Prosecution version otherwise is that the bottles had been sealed with the seal of PSP and CFSL report Ex.PW-12/DA also speaks that bottles marked RHW-I and RPPW-I had been received in the office of the CFSL at Chandigarh with the seal of PSP intact. Submission on this score being that what had been kept in the almirah of PW-1 was two sealed bottles having seal of PHP and those had been sent to CFSL through PW-13; what was received in the office of CFSL having the seal of PSP. This discrepancy remained

unexplained. Attention has also been drawn to the testimony of PW-5 wherein in his examination-in-chief he stated that the hand wash of PW-5 was kept in bottles; these were kept in the bag. Submission being that the possibility of this same hand wash having been sent to the CFSL to falsely implicate the accused cannot be ruled out; it was incumbent upon PW-5 or the investigating team to have testified that this hand wash which was demonstrated in the pre-trap proceedings had been thrown away. This hand wash having been kept in the investigating officer's bag clearly throws a doubt on the veracity on the prosecution evidence. The link evidence is also not complete. Section 293 Cr. P.C. prescribes that only reports of those persons who have been described in Clause 4 of Section 293 are admissible in evidence. Reliance has been placed upon 1994 (4) AD (Del) 1171 Amarjit Singh Vs. State as also another judgment of this court reported as 1997 (3) AD (Del) 1014 Raj Mani Vs. State to support a submission that only such category of persons as mentioned in Section 293(4)(e) of the Cr.P.C. can submit their report to the court directly without being called as a witness. Ex.PW-12/D was prepared by a Senior Scientific Officer who is neither in the rank of an Assistant Director and nor a Deputy Director. This

CrI.A. Nos.16/2006, 33/2006 & 46/2006 Page 8 of 54

report has been prepared by a Senior Scientific Officer and is thus *per se* inadmissible. Second submission of the learned counsel for the appellant is posed on the versions of PW-3 and PW-5; submission being that PW-3 stated that the raid proceedings had started between 4:00- 4:30 p.m.; PW-5 had given time of 5:00-6:00 p.m.; PW-10 had given time of 5:00 p.m. These testimonies are irreconcilable. Third submission being that PW-3 had stated that the demonstration of the tainted money changing colour was conducted upon PW-5 whereas PW-3 has stated that the demonstration was given upon him; version of the prosecution as is clear from the testimony of PW-11 being that the amount was carried out upon PW-5 alone. There is also no explanation as to why the accused persons have not been specifically identified by the witnesses in the dock. The questions put to the accused persons in their statement recorded under Section 313 Cr. P.C. shows a complete non-application of mind as question no.16 and 17 are wholly irrelevant. Attention has been drawn to the charge which has been framed against the accused; submission being that where the ingredients of the charge are different from what is sought to be established by the prosecution it is a clear case of prejudice having been suffered by the public servant for which he

CrI.A. Nos.16/2006, 33/2006 & 46/2006 Page 9 of 54

would be entitled for benefit of doubt and a consequent acquittal. For this proposition reliance has been placed upon 1978 AIR 1672 Bhupesh Gupta Vs. State of Tripura. It is argued that the presumption under Section 20 of the Said Act is not available in case of trivial amounts; this is engrafted in the legislation itself and attention has been drawn to Section 20(3) of the Said Act. To support this proposition reliance has been placed upon a judgment of this Court reported as 2010(1) ALD (Cri) 497 A.Subair Vs. State of Kerala. Submission being that where the amount is so small the court is not bound to draw a presumption under Section 20 of the Said Act; in that case the appeal had been allowed. The defence of the accused is plausible. The motive for falsely implicating the accused primarily was for the reason that there was a notification issued by Lt. Governor dated 11.8.1998 making it incumbent upon the police officials to remove all encroachment; it was pursuant to this directions that all the rehriis were removed; this was the cause of grudge of the complainant (PW-3); this was the reason for this false implication. Further submission being that PW-3 had in one part of his version admitted that he was carrying a piece of paper in which some name had been mentioned; meaning thereby he was deposing at the

Crl.A. Nos.16/2006, 33/2006 & 46/2006

Page 10 of 54

behest of someone else and not as per his own memory; he was tutored; on all counts the accused was entitled to a benefit of doubt and a consequent acquittal.

8 On behalf of accused Mohd. Taufiq arguments have been addressed by Senior Counsel Mr. S.S.Gandhi. Attention has been drawn to Section 17(b) of the said Act. Submission being that it is only an officer of ACP level who can investigate offences under the said Act and if officers below the said rank are permitted to investigate there must be a written order to this effect. Submission of the learned counsel for the appellant being that PW-11 in his cross-examination has admitted that he cannot say if there is any notification of the State or Centre authorising any person below the rank of ACP to investigate offences under the Said Act. To support this submission reliance has been placed upon AIR 1994 SC 1205 Vishnu Kondaji Jadhav Vs. State of Maharashtra ; (2006) 7 SCC 172 State Inspector of Police Vishkhapatnam Vs. Surya Sankaram Karri. Attention has been drawn to the version of PW-3. Submission being that there was no demand made by Mohd.Taufiq and this is clear from the confrontation of PW-3 to his

earlier statement (Ex.PW-3/DA) wherein he has admitted that in the first complaint Mohd. Taufiq had not made any demand from complainant; admittedly there was also no acceptance of any bribe by Mohd. Taufiq. As per the prosecutions acceptance of money was by co-accused Prem Chand. Attention has been drawn to the version of PW-3 on oath in court wherein he admitted that there is no mention that any demand was made by the accused persons either on 27.9.1998 or 28.9.1998; this is in conflict with the complaint (Ex.PW-3/A) wherein he had stated that demands were made on 26.9.1998, 27.9.1998 and 28.9.1998 and this also finds mention in the charge which has been framed against the accused on 21.3.2002. PW-3 is not a credible witness. Attention has also been drawn to the version of PW-5 wherein he has stated that the complainant was keeping a rehri of keys rings and underwears. Submission being that this is not in conformity with the statement of the complainant whose version was that he was keeping a rehri of hand bags. PW-5 in his version has also admitted that he was on duty as a panch witness in the Anti Corruption Branch on 28.9.1998 meaning thereby that he himself admitted that he was a stock witness. Even otherwise he has not supported the version of the prosecution. The

Crl.A. Nos.16/2006, 33/2006 & 46/2006

version of the complainant has remained uncorroborated; the case of the prosecution must fail. To support this submission reliance has been placed upon AIR 1979 SC 1191 Panalal Damodar Rathi Vs. State of Maharashtra as also a judgment of a Bench of this Court in Crl.A. No.81/2008 M.P.Singh Vs. State delivered on 23.01.2014. Submission being that where the version of the complainant was not corroborated, the evidence of the complainant could not be relied upon. Sanction for prosecution is also bad as it is bereft of details; it is silent about the notification of the Lt.Governor which had commanded the enforcement agencies to remove all illegal encroachments; this vital aspect was missing in the sanction order.

9 On behalf of the third appellant Prem Chand, arguments have been addressed by learned senior counsel Mr.J.P.Sengh. It is stated that even as per the version of the prosecution, the complainant had put the tainted money in a piece of paper; if this was the position the question of Prem Chand having touched the notes would not arise and as such the hand and pocket wash of the appellant testing positive clearly appears to be a case of false plantation. This paper has also not referred in the

course of investigation. Attention has been drawn to the testimony of PW-3 who in his cross-examination has categorically admitted that Prem Chand had not made any demand of money on any occasion i.e. either at the first or at the second occasion. Submission being that the ingredients of the offence for which the appellant has been convicted are liable to be set aside. To support his submission learned counsel for the appellant has placed reliance upon a judgment of the Apex Court in Criminal Appeal No.2052/2010 State of Punjab Vs. Madan Mohan Lal Verma wherein the court had noted that before the presumption under Section 20 of the Said Act is drawn the accused is called upon to explain as to how the amount in question was found to be in his possession, the foundational facts must be established by the prosecution; the complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness; the court must look for independent corroboration before convicting the accused.

10 Arguments have been refuted by the learned public prosecutor. It is pointed out that on no count does the impugned order call for any

interference. It is pointed out that all links in this chain stand complete and for this purpose reliance has been placed upon the versions of PW-3, PW-5, PW-11 as PW-13 as also the raiding officer PW-12. It is pointed out that that seal used was PSP and seal of PHP coming in the version of PW-1 is only a typographical error; even the CFSL in its report stated that the sealed packets were received intact having the seal of PSP. It is pointed out that the numbers of the GC notes which were recorded in the pre-trap proceedings tallied with the number of the notes recovered from the possession of the accused Prem Chand; the numbers had matched. Attention has been drawn to the pre-trap proceedings (Ex.PW-3/B) as also panchnama (Ex.PW-5/A) which was drawn at the spot; submission being that on all counts the documentary evidence matches the oral versions of the members of the raiding party. Learned public prosecutor submits that even if there is an omission on the framing of the charge; this technical error does not vitiate the conviction unless it is shown that the accused has suffered any prejudice. For this submission reliance has been placed upon a judgment of the Supreme Court reported in (2011) 8 SCC 300 Rafiq Ahmad Vs. State of U.P. On no count does the impugned order call for any interference. Reliance

Crl.A. Nos.16/2006, 33/2006 & 46/2006

Page 15 of 54

has also been placed upon AIR 1987 SC 1713 Union of India Vs. Nihar Kanta Sen & Ors. to support a submission that notifications which are issued in the Gazette can be relied upon per se without formal proof under Sections 56 and 57 of the Indian Evidence Act. This is in context of the arguments that as such an investigation conducted by an Inspector is a valid investigation; the notifications dated 21.3.1968 and 19.5.1970 passed by Delhi Administration have also been placed on record for perusal of the court.

11 Arguments have been heard. Record has been perused.

12 The sanction has been proved in the version of Mr.Vivek Gogia (PW-6). He was the Deputy Commissioner of Police. He has deposed that after having perused the entire material on record and considering the matter carefully he had accorded sanction for prosecution of the appellants. The sanction order has been proved as Ex.PW-6/A. A perusal of this order shows that there has been a proper application of mind. The history and narration of the incident has been noted in the sanction order. The only submission of the learned defence counsel on this aspect is that the sanction order did not reflect that there was a

notification by the Lt. Governor directing the enforcement agencies to remove illegal encroachments

13 Perusal of sanction order Ex.PW-6/A to Ex.PW-6/C wholly negatives this submission of the learned counsel for the appellant. The sanction order is contained in three pages. Apart from the brief narration of the facts of the case, the details as to when the demand had been made upon the victim and inability on the part of the victim to pay up the amount which had led him to file this complaint before the CBI had been noted. The facts which were material for the grant of sanction were in the knowhow of the sanctioning authority at the time when sanction was granted.

14 A sanction order is not required to be a detailed one; the sanction order should speak for itself. The Constitution Bench of the Supreme court in 1963 Supp (2) SCR 652 R.S. Pandit V.State of Bihar referring to a decision of the Privy Council reported in AIR 1948 P.C. 82 Gokulchand Dwarkadas Mararka Vs. R. had in this context noted as follows:

“Section 6 of the Act (old Act) does not require the sanction to be given in a particular form. The principle expressed by the Privy Council, namely, that the sanction should be given in respect of the facts constituting the offence charged equally applies to the sanction under Section 6 of the Act. In the present case all the facts constituting the offence of misconduct with which the appellant was charged were placed before the Government. The second principle, namely, that the facts should be referred to on the face of the sanction and if they do not so appear, the prosecution must prove them by extraneous evidence, is certainly sound having regard to the purpose of the requirements of a sanction.”

The sanction was valid.

15 Section 17 of the Said Act is contained in Chapter- IV. It deals with investigation of cases under the Act. Section 17 prescribes the category of persons who are authorized to investigate offences, it is an non-obstante clause.

16 Section 17(b) reads herein as under:

17. Person authorized to investigate.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,-

.....

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;”

17 This provision has been relied upon by the learned counsel for the appellant to argue a submission that the investigating officer in this case was PW-12 ACP G.L.Mehta, then an inspector in the Anti Corruption Branch and being below the rank of an ACP. Investigation into this offence by the then inspector being without permission of the magistrate, was an illegal investigation; the entire investigation is vitiated on this count alone.

18 Section 17 of the said Act is a safeguard which has been incorporated in the Act in favour of the accused in order that investigation for serious offences under the Act may be conducted by an officer of a higher rank and not below the rank of ACP and where it is below the rank of an ACP permission necessarily has to be obtained from the magistrate.

19 The Supreme Court had an occasion to examine this position in AIR 1992 SC 604 State of Haryana Vs. Bhajan Lal . Para 125 of the

judgment reads herein as under:

“It has been ruled by this Court in several decisions that Section 5A (new section 17) of the Act is mandatory and not directory and the investigation conducted in violation thereof bears the stamp of illegality but that illegality committed in the course of an investigation does not affect the competence and the jurisdiction of the Court for trial and where the cognizance of the case has in fact been taken and the case is proceeded to termination the validity of the proceedings with the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby.”

20 Thus even presuming that the necessary permission of the magistrate has not been taken, the contention of the prosecution that the resultant order of conviction and sentence is liable to be quashed on account of incompetency of PW-12 to investigate is liable to be rejected; it is accordingly rejected.

21 That apart the notifications dated 21.3.1968 and 19.5.1970 are per se admissible under Section 57(1) of the Indian Evidence Act. They are “law” under Article 13(3)(a) of the Constitution of India. For a better appreciation the said notifications are reproduced herein as under:

“No.F.2(16)/67-V: In pursuance of the first proviso to subsection

1 of section ..(1) of the Prevention of Corruption Act, 1947 (2 of 1947) the Administrator of the Union Territory of Delhi is pleased to authorise Inspectors of Police for the time being serving in the Anti Corruption Branch of the Delhi Administration or who may be posted in future to serve in the said branch, to investigate offences under the said Act in the whole of the said Territory so long as they remain posted in the said Branch.”

“.....In modification of notification no. F2.2/16/67..... and in pursuance of the first of the Section 6(a) of the Prevention of Corruption Act, 1947 (2 of 1947) the Administrator of Union Territory of Delhi is pleased to authorise Inspectors of Police working in the Anti-Corruption Branch of the Delhi Administration to investigate offences and to make arrest without a warrant under section 6 of the Act and of the IPC in the whole of the said.

22 These notifications which are undisputed documents empower Inspectors posted in the Anti Corruption Branch to investigate offence under the said Act and they have also been given powers to arrest without a warrant. It is also not the argument that there has been any resultant miscarriage of justice on the investigation having been conducted by PW-12.

23 Charge had been framed against each of the accused persons on
Crl.A. Nos.16/2006, 33/2006 & 46/2006

21.3.2002. The charge reads herein under as follows:

(i) *I, S.S.Bal, Special Judge, Delhi do hereby charge you Constable Prem Chand No.1709/SD/ S/o Sh.Shadi Ram R/o Gaon Gandhi Chana, P.S. Behrod District Alwar, Rajasthan as under:*

“Firstly, that you being a public servant employed as Constable No.1709/SD of Delhi police on 26.9.98 demanded Rs.300/- as monthly plus Rs.20/- for each Sunday along with co-accused Constable Pramod Kumar No.1003/SD and Constable Mohd. Toufiq No.980/SD from complainant Sh.Mohd.Sattar s/o Sh.Seikh Abdul Rayak r/o A-189 Tajpur Pahari, Badarpur, Delhi in consideration for allowing him to run a business upon a pavement on Mathura Road, Opposite P.S. Badarpur, Delhi and again on 28.9.98 you again demanded Rs.300/- from the said complainant for the said consideration along with Const. Pramod Kumar and Const. Mohd. Toufiq and accepted and obtained Rs.300/- from said Mohd. Sattar and thereby committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and within my cognizance.

Secondly, that you on the aforesaid date, time and place being a public servant employed as aforesaid by corrupt or illegal means or by otherwise abusing your position as such public servant along with co-accused Const. Pramod Kumar and Cont. Mohd.Toufiq obtained for yourself pecuniary advantage i.e

Rs.300/- from the aforesaid complainant and thereby 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 you to be tried by this Court on the aforesaid charges.

sd

Special Judge

Charges framed against accused today are read over and explained to the accused and he is questioned as follows:

Q. Do you plead guilty to the charges or not?

Ans. I plead not guilty.

Q. Do you want to contest the case or not?

Ans .I claim trial of the case.”

(ii) I, S.S.Bal, Special Judge, Delhi do hereby charge you Constable Mohd. Taufiq No.980/SD S/o Sh. Babu Khan R/o A-8, P.S. Ambeadkar Nagar, Delhi as under:

Firstly, that you being a public servant employed as Constable No.980/SD of Delhi Police on 26.9.98 demanded Rs.300/- as monthly plus Rs.20/- for each Sunday along with co-accused Const.Prem Chand and Const. Pramod KUMar from complainant Sh.Mohd.Sattar s/o Sh.Seikh Abdul Rayak r/o A-189 Tajpur Pahari, Badarpur, Delhi in consideration for allowing him to run a business upon a pavement on Mathura Road, Opposite

P.S. Badarpur, Delhi on 27.9.98 and 28.9.98 you again demanded Rs.300/- from the said complainant for the said consideration in pursuance of that Constable Prem Chand who was also accompanied and demanded, accepted and obtained Rs.300/- from said Mohd. Sattar and thereby committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and within my cognizance.

Secondly, that you on the aforesaid date, time and place being a public servant employed as aforesaid by corrupt or illegal means or by otherwise abusing your position as such public servant along with co-accused Constable Pramod Kumar and Constable Prem Chand obtained for yourself pecuniary advantage i.e. Rs.300/- from the aforesaid complainant and thereby 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 you to be tried by this Court on the aforesaid charges.

sd

Special Judge

Charges framed against accused today are read over and explained to the accused and he is questioned as follows:

Q. Do you plead guilty to the charges or not?

Ans. I plead not guilty.

Q. Do you want to contest the case or not?

Ans .I claim trial of the case.”

(iii) I, S.S.Bal, Special Judge, Delhi do hereby charge you Constable Pramod Kumar No.1003/SD/ S/o Sh.Budhi Parkash R/o A3/3 P.S. Defence Colony, Delhi as under:

“Firstly, that you being a public servant employed as Constable No.1003/SD of Delhi police on 26.9.98 demanded Rs.300/- as monthly plus Rs.20/- for each Sunday along with co-accused Const.Prem Chand and Const, Mohd. Toufiq from complainant Sh.Mohd.Sattar s/o Sh.Seikh Abdul Rayak r/o A-189 Tajpur Pahari, Badarpur, Delhi in consideration for allowing him to run a business upon a pavement on Mathura Road, Opposite P.S. Badarpur, Delhi on 27.9.98 and 28.9.98 you again demanded Rs.300/- from the said complainant for the said consideration and in present of that Constable Prem Chand who was also accompanied demanded, accepted, obtained Rs.300/- from said Mohd. Sattar and thereby committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and within my cognizance.

Secondly, that you on the aforesaid date, time and place being a public servant employed as aforesaid by corrupt or illegal means or by otherwise abusing your position as such public servant along with co-accused Cont. Mohd. Toufiq and Constable Prem Chand obtained for yourself pecuniary advantage i.e Rs.300/- from the aforesaid complainant and thereby 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 you to be tried by this Court on the aforesaid charges.

sd

Special Judge

Charges framed against accused today are read over and explained to the accused and he is questioned as follows:

Q. Do you plead guilty to the charges or not?

Ans. I plead not guilty.

Q. Do you want to contest the case or not?

Ans .I claim trial of the case.”

24 Each of the accused persons were charged individually. They have admittedly been convicted under Section 13(2) read with Section 13(1)(d) as also Section 7 of the Said Act read with Section 34 of the IPC. It is undisputed that no separate charge under Section 34 of the IPC was framed against any of the accused.

25 Section 22 of the said Act prescribes that the procedure contained in the Cr.P.C. is applicable to proceedings under the said Act. Section 215 of the Cr. P.C. is relevant. It reads as:-

215. Effect of errors. – No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

26 The illustrations attached to this Section clearly show unless the irregularity or omission in the charge has misled or caused a prejudice to the accused in his defence and has thereby occasioned failure of justice it will not vitiate the trial. Main concern of the court is to ensure that the accused has had a fair trial and whether he knew what he was being tried for.

27 In the instant case, the reading of the charges leveled against each of the accused persons clearly show that each of them knew that a demand of Rs.300/- had been made by them from the complainant as a consideration for allowing the complainant to run his business at the pavement and this illegal gratification was accepted by Prem Chand; making each of them liable for a criminal misconduct. These demands were made on 26.9.1998, thereafter on 27.9.1998 and again on 28.9.1998 Rs.300/- in the presence of each other and on 28.9.1998 an

Crl.A. Nos.16/2006, 33/2006 & 46/2006 Page 27 of 54

illegal gratification of Rs.300/- had been accepted by Prem Chand; this was by an abuse of their position as public servants. The facts as noted in the charge had given each of them a full and fair chance to defend themselves; merely because there has been an omission in not mentioning Section 34 of the IPC; which is not a substantive offence but only recites a common intention of each accused with the other co-accused in furtherance of the same act; in the facts of the instant case it can in no manner be said that by not framing a separate charge under Section 34 of the IPC any failure of justice had occasioned to any of the accused persons.

28 The judgment of Bhupesh Gupta relied upon by the learned counsel for the appellant is distinct on facts. In that case what had been understood by the accused persons was diametrically opposed to what had formed the basis of the charge. The wording of the charge framed by the Special Judge was that the money was remitted by Nikhil Chakraborty (complainant) in exercise of official function for showing a favour to Sachinder Deb on the plea of securing a service for the said Sachinder Deb. The court had proceeded on the basis that the

gratification had been received by the accused for showing favour as a public servant whereas the basis of the charge was entirely different; the gratification had been paid to the accused for influencing a public servant. This had occasioned a failure of justice. Facts of the instant case are distinct. This argument is also without force.

29 The raid officer PW-12 after the pre-appointed signal given by the panchwitness PW-5 proceeded towards the spot where all the accused persons constable Prem Chand, constable Pramod and constable Mohd. Taufiq were present. Search of accused Prem Chand was taken and from his right pant pocket currency notes were recovered. The hand wash and right pant pocket wash of Prem Chand were taken and when washed in a sodium carbonate solution it turned pink. This solution was kept in four phials; two phials contained the right hand wash of Prem Chand (marked as RHW-I and RHW-II) and other two phials contained the right pant pocket wash of Prem Chand (marked as RPPW-I and RPPW-II). PW-12 has categorically deposed that these bottles were labelled with labels bearing the signatures of complainant and the panch witness which were pasted on these phials and thereafter sealed with the seal of PSP; separate impression of the seal was also taken on two blank papers.

These exhibits were taken into possession vide memo Ex.PW-3/D. The investigating officer was PW-11 (Inspector Y.S. Negi). He has deposed that on reaching the spot at about 7:00 p.m., after the statement of witnesses were recorded; the exhibits RHW-I and RPPW-I and a copy of the sample seal was deposited with ACP Rati Ram (PW-1). PW-1 has corroborated this version of PW-11. He deposed that on 28.9.1998 when he was posted in the Anti Corruption Branch PW-11 had deposited two bottles i.e. RHW-I and RPPW-1 which were sealed with the seal of PHP along with a sample seal which he had kept in an intact condition in his almirah which was locked by him; the key was kept by him. The deposition of PW-1 had made reference to the seal of PHP whereas as per the version of the prosecution the seal used was the seal of PSP. It is this part of the deposition of PW-1 which has been highlighted vehemently by learned defence counsel to say that there is a possibility of tampering and the seal used to seal RHW-I and RPPW-I was the seal of PHP whereas the parcels received in the CFSL had the seal of PSP. PW-1 has further deposed that on 02.11.1998 the investigating officer Inspector Y.S. Negi (PW-11) had come to the Anti Corruption Branch and he was handed over the two bottles i.e. RPW-I and RPW-II along

Crl.A. Nos.16/2006, 33/2006 & 46/2006

with sample seal for deposit in the CFSL, Chandigarh which exhibits had been sent through Inspector Kamal Sapra (PW-13). PW-13 has fully corroborated this version of PW-1. He has on oath deposed that on 02.11.1998 he had taken the Exs. RHW-I and RPPW-I and the sample seal vide road certificate No.119/1998 and deposited the same in the CFSL, Chandigarh; there was no tampering with the exhibits during his custody; this witness was not cross-examined. CFSL report Ex.PW-12/D is also corroborative of this oral version. This report clearly states that on 03.11.1998 two sealed bottles marked Exs.RPW-I and RPPW-I were received through PW-13; they were sealed with the seal of PSP; both the exhibits contained 70 ml of a pink coloured solution; the seals were intact and tallied with the specimen seal as per the forwarding authority letter.

30 It is in this background that the argument of the learned defence counsel has to be appreciated. The versions of PW-12, PW-11 and PW-13 all speak of the seal of PSP. PW-1 alone has stated that the exhibits were sealed with the seal of PHP. This could be nothing but a typographical error; the middle alphabet of 'S' having been typed as

‘H’. This is clear from the fact that all the aforementioned witnesses in their oral depositions have stated that these exhibits were labeled and then sealed with the seal of PSP. The labels pasted on these exhibits were signed by the complainant and the panchwitness. It was thereafter that the seal of PSP was affixed on these exhibits. Not only the custodian of these exhibits (from 28.9.1998 up to 02.11.1998) i.e. PW-1 have categorically deposed that these exhibits were kept in an intact position in his almirah and on 02.11.1998 they were handed over to PW-12 who through PW-13 had sent them to CFSL Chandigarh. PW-13 has also categorically stated that when the parcels were handed over to him on 02.11.1998 and till the time of their delivery in the CFSL Chandigarh on 03.11.1998 there was no tampering of the exhibits which were in his custody. As noted supra this witness was not cross-examined at all. That apart the CFSL in its report Ex. PW-12/D has also specifically noted that the seals of these exhibits were intact and had been compared with the specimen seal which had been sent along with the forwarding letter. In these circumstances the question of tampering of the exhibits did not arise. Thus this argument of the learned counsel for the appellant is completely devoid of force.

31 Under Section 293 of the Cr.P.C. reports made by Senior Government scientific expert are admissible in evidence; this Section provides for reading in evidence; certain documents purported to be reports under the hand of a Government scientific expert as enumerated in sub-section 4. This includes category of persons i.e. a Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory and a State Forensic Science Laboratory. Sub-section 2 of Section 293 vests a discretion in the court to summon and examine any such expert as to the subject matter of his report. It is not a mandate but a discretion; the word used is 'may' and not 'shall'. It is on the facts of each case that the court has to exercise its discretion as to whether the expert has to be examined or not. The Supreme Court in AIR (2004) 8SCC 660 of Himachal Pradesh Vs. Mast Ram had an occasion to examine this provision in the context of a report submitted by a junior scientific officer (ballistic).

32 In this context the following observations of the Apex Court are relevant and are reproduced herein as under:

“6. Secondly, the ground on which the High Court has thrown out the prosecution story is the report of ballistic expert. The report of ballistic expert (Ex. P-X) was signed by one junior scientific officer. According to the High Court, a junior scientific officer (Ballistic) is not the officer enumerated under sub-section (4) of Section 293 of the Code of Criminal Procedure and, therefore, in the absence of his examination such report cannot be read in evidence. This reason of the High Court, in our view, is also fallacious. Firstly, the Forensic Science Laboratory Report (Ex. P-X) has been submitted under the signatures of a junior scientific officer (Ballistic) of the Central Forensic Laboratory, Chandigarh. There is no dispute that the report was submitted under the hand of a Government Scientific expert. Section 293(1) of the Code of Criminal Procedure enjoins that any document purporting to be a report under the hand of a Government scientific expert under the section, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under the Code, may be used as evidence in any inquiry, trial or other proceeding under the Code. The High Court has completely over-looked the provision of sub-section (1) of Section 293 and arrived at a fallacious conclusion that a junior scientific officer is not an officer enumerated under sub-section 4 of Section 293. What sub-section 4 of Section 293 envisages is that the court to accept the documents issued by any

of six officers enumerated therein as valid evidence without examining the author of the documents.”

33 Ex.PW-12/D was examined by Deepak Middha, Senior Scientific Officer (Explosive). This report was accepted in the testimony of PW-12. PW-12 has deposed that the CFSL result was collected by PW-11 from the CFSL, Chandigarh and proved as Ex. PW-12/D. Not a single question has been put to this witness qua this report. It has remained unchallenged. The mode of proof of this report not having been challenged in the trial Court, such an argument cannot be taken in appeal.

34 A Bench of this Court in 2011 I AD (Delhi) 613 Bilal Ahmed Vs. State had noted herein as under:

The law as to the admissibility of the documents is well settled. In Phool Kumar v. Delhi Administration 1975 (1) SCC 797 and Ashfaq v. State AIR 2004 SC 1253, the Hon'ble Supreme Court held that any objection as to the mode of proof of document has to be taken at the time of trial and cannot be subsequently taken in appeal. Before framing of charge, a copy of CFSL report Ex. PX was provided to the Appellant on 12th October, 1999. Under Section [293](#) Cr.P.C., a report of an expert is per se admissible, without examination of the expert. Under Sub-section (2), the

Court may, if it thinks fit, summon and examine any such expert as to the subject matter of his report. Thus it is not mandatory for the Court to examine the expert whose report is used as evidence in any inquiry, trial or other proceedings, nor is it obligatory for the Court to ask the accused if he wants to summon the expert.”

35 A Division Bench of the Gujarat High Court in (2004) 2 GLR 1285 Dalwadi Govindbhai Vs. State of Gujarat had also noted that where the report of a senior scientific officer (in this case it was a Xerox report and not even an original) was unchallenged and it has been brought on record during the examination of the investigating officer and no request was made by the defence to summon the expert of CFSL, such a report could be relied upon. Even otherwise such a report would be relevant as a piece of evidence under Section 45 of the Evidence Act. This proposition goes undisputed.

36 Ex.PW-12/D inculcating Prem Chand was rightly read in evidence.

37 PW-1 the ACP in the Anti Corruption Branch in his cross-examination admitted that Register No.19 is not maintained in the Anti Corruption Branch and it does not have a notified malkhana. PW-2 on

the other hand had deposed that the deposit of three GC notes and two bottles (RHW-II and RPPW-II) and a pant pullanda were entered in Register No.19 and these entries were proved as Ex.PW-2/A. A perusal of these entries show that these entries relate to P.S.Civil Lines.

38 Testimony of PW-11 is also relevant. He has deposed that after completion of the investigation at the spot he had returned to the Anti Corruption Branch; the accused persons were put in the lock up in the Civil Lines police station. The case property exhibits RHW-II, RPPW-II, pant pullanda and GC notes were deposited in the malkhana; this was not in the malkhana of Anti Corruption Branch but the malkhana of P.S. Version of PW-1 is correct. It is not in conflict with the version of PW-1. There is fault in this version. There is no notified malkhana in the Anti Corruption Branch and the malkhana of police station Civil Lines had been used. This is clarified in the version of PW-11 who had stated that after the accused persons had been arrested they were put in the lock up of police station Civil Lines. There is also no separate lock-up in the Anti Corruption Branch. The Anti Corruption Branch is in fact a part of police station Civil Lines. Since the Anti Corruption Branch did not have a notified malkahana, that is

Crl.A. Nos.16/2006, 33/2006 & 46/2006 Page 37 of 54

why the two bottles i.e. RHW-1 and RPPW-I along with sample seal had been kept by PW-1 in his locked office till the time of their deposit in the CFSL.

39 Learned public prosecutor under instruction from Inspector Manoj Kumar, Anti Corruption Branch has in fact made a clarification which is to the effect that up to 1999 there was admittedly no separate malkhana in the Anti Corruption Branch; the Anti Corruption Branch was using the malkhana of police station Civil Lines where the Anti Corruption Branch was in fact housed.

40 Thus this argument of the learned counsel for the appellant that there is a discrepancy in the version of PW-1 and PW-11 as to whether there was any Register No.19 in the Anti Corruption Branch or not is an argument bereft of force.

41 PW-3 the complainant was the star witness of the prosecution. He had given his complaint to the CBI on 28.9.1999 duly signed by him. This has been proved as Ex. PW-3/A. In this complaint, it was categorically stated that PW-3 was running a rehri on the pavement along with other persons; the aforementioned three constables i.e. constable

Prem Chand, constable Mohd.Taufiq and constable Pramod Kumar had asked him to remove his rehri. He had in fact removed it but thereafter had started putting the rehri again as other vendors were using the payment for carrying out the similar business and he felt that he was being discriminated. He was threatened by the accused persons to remove his rehri or else he would have to pay Rs.300/- as monthly charges besides Rs.20/- on every Sunday. This demand was first made on 26.9.1998 followed by a demand on 27.9.1998 and thereafter on 28.9.1998. Since he was unable to pay the amount he had made a complaint to the CBI.

42 In his deposition on oath in court PW-3 has reiterated all these averments. He has reiterated that on 26.9.1998 all the aforementioned accused told him pay Rs.300/- per month and Rs.20/- on every Sunday to run his business. He sought time to pay the amount and told them that he would make arrangement for the money on 28.9.1998. He made a complaint to the CBI.

43 There is no doubt that in this deposition there is no mention of a date of 27.9.1998 but this is not such a material omission which would be sufficient to throw a doubt on his creditability. Version of PW-3 has

CrI.A. Nos.16/2006, 33/2006 & 46/2006 Page 39 of 54

in fact all along been consistent. He has reiterated that he was carrying out this work for the last 6 to 7 years; about 2 ½ or 3 months ago he was asked to remove his rehri but he had started putting it back as he felt that he was being discriminated as other persons were also plying their rehris there. On query he had been told to pay bribe amount.

44 The pre-raid proceedings have also been described by this witness. He has deposed that in the pre-raid proceedings powder was applied on the three GC notes of Rs.100/-; thereafter he was asked to touch the notes and when his hand was washed in a solution it turned pink. These notes were returned back to him which he had wrapped in a paper and kept them in his front shirt pocket. In the pre-raid proceedings it was explained to him that he had to hand over the money to the police official only on demand. Panchwitness Om Prakash (PW-5) was also a witness to the proceedings.

45 Thereafter the raid proceeding had been described. PW-3 has deposed that he had reached the spot at about 4:20 p.m. PW-5 was having tea with him. Mohd.Taufiq first made a demand but he was told that PW-3 had a guest with him; thereupon Mohd.Taufiq followed Pramod and Prem Chand who were standing at a distance. The witness

has nowhere given the measurement of this distance as has been vehemently argued by the learned defence counsel stating that it was 50-60 yards. Thus the argument that the conversation between the co-accused could not be heard by the witness also belied. Version of the witness is that the other co-accused were standing at 'some distance'. PW-3 has further deposed that Pramod asked Mohd. Taufiq if the money had been received to which he was informed that the money had not yet been paid. Pramod thereupon became furious and called PW-3; on an assurance from PW-5. PW-3 went towards the accused followed by PW-5. From his shirt pocket he handed over the money to Pramod who told him to hand over the money to Mohd.Taufiq but on handing over the money to Mohd.Taufiq he was asked to pay the money to Prem Chand who accepted it in his right hand and kept it in his right pant pocket. The common concert of all the three accused in the demand of the bribe money and thereafter its acceptance which was physically accepted by Prem Chand is evident. The appointed signal was then given by PW-5 and the raiding party reached the spot.

46 Thereafter the other formalities of taking the hand wash, pant pocket wash of the accused and sealing of the bottles followed by arrest

of the accused was done. In his cross-examination PW-3 has admitted that he is still plying the rehri at the same place. He reiterated that the demand was first made to him on 26.9.1998. He admitted that he had written something on his left palm on a piece of paper which he brought to the court to refresh his memory; the initials of the seal 'PSP' had been noted on the paper the name of the witness Om Prakash was written. He further stated that Mohd. Taufiq had arrived at the spot first and made a demand and on the second occasion he did not accept the money in his hand. In a further part of his cross-examination PW-1 admitted that Prem Chand did not demand any money either on the first occasion or on the second occasion.

47 Efforts had also been made by the learned defence counsel to confront PW-1 with his earlier statement Ex. PW-3/DA but nothing material has been elicited to point out any improvements in his version.

48 The version of PW-3 is fully corroborative of his complaint Ex. PW-3/A. On oath it has been reiterated that the demand for the first time surfaced from the aforementioned three beat constable i.e. on 26.9.1998 and it was reiterated on 28.9.1998; PW-3 had sought time on 26.9.1998 to arrange for the money. Complaint was filed in the CBI on 28.9.1998.

In the pre-trap proceedings PW-3 was joined by PW-5. Demonstration was shown to PW-3 as to how on touching the tainted GC notes the solution turns pink. PW-5 was also present there at that time. At the time of the raid i.e. on 28.9.1998, at about 4:30 p.m. Mohd. Taufiq had first made a demand; PW-3 informed him that he had a guest thereupon Mohd. Taufiq joined his co-accused i.e. constable Pramod Kumar and Prem Chand who were at some distance; it is evident from the gist of this version that they were within a hearing distance. PW-3 had further deposed that when constable Pramod Kumar learnt that no money had been paid to Mohd. Taufiq he became furious. PW-3 reached there and offered money to Mohd. Taufiq who told him to give it to Pramod Kumar and Pramod asked him to pay the money to Prem Chand which was finally received by Prem Chand and kept by him in his right pant pocket.

49 In the pre-raid proceedings which were conducted in the morning of 28.9.1998 PW-3 stated that he had wrapped the tainted money (which had been coated with phenolphthalein powder) in a piece of paper and put the same in his right shirt pocket. This was obviously with the intent to let powder remain intact and to protect it from getting wasted. This

piece of paper no doubt did not surface. Relevant would it be to note that not a single question has been put to PW-3 about this piece of paper; had it been put he would have had a chance to explain.

50 Testimony of PW-3 read as a whole inspires confidence; it is credible, cogent and coherent. The complainant in this testimony has not only corroborated the version given in his complaint but this version is fully conformable with the documentary evidence as well which included the panchnama (Ex.PW-5/A).

51 PW-3 in one part of his version had stated that he had reached the spot at 4:00– 4:30 p.m.; PW-5 had given time of 5:45 p.m.; PW-11 has stated the time to be around 5:00 p.m.. The argument on this count being that different timings had been given about the time of the incident; destroying the credibility of the witness. One has to remember that it was in the month of September when the incident had occurred; it was in the afternoon; it was not as if each of the witnesses were reporting the time by looking at their watch; each individual has a different time perception. This is not such an inconsistency which would otherwise affect the reliability of the witnesses.

52 PW-5 did not support the version of the prosecution on the
Crl.A. Nos.16/2006, 33/2006 & 46/2006

identity of the accused. He, however, admitted his signatures on all the documents which had been signed by him which not only included the label which has been used for sealing the exhibits (RHW-I , RHW-I, RPPW-I and RPPW-II) but also the panchnama (Ex.PW-5/A) which has recorded the entire trap proceeding including the recovery effected from Prem Chand on the demand being made by the accused. It also records that all the accused persons had been apprehended on the spot. To this extent this part of the version of PW-5 is fully corroborative of version of PW-3.

53 Courts have time and again reiterated that a testimony of a hostile to the extent of relevancy has to be accepted in toto; that part of the grain which can be separated from chaff can be read. In judgment reported as AIR 1991 SC 1853 Khijji alias Surendra Tiwari Vs. State of Madhya Pradesh, the supreme Court has made the following observation which is relevant and reads as under:

“But counsel for the State is right when he submits that the evidence of a witness, declared hostile, is not wholly effaced from the record and that part of evidence which is otherwise acceptable can be acted upon. It seems to be well settled by the decisions of this Court Bhagwan Singh v. State of Haryana Cri.

LJ 203; Rabinder Kumar Dey v. State of Orissa 1977 Cri LJ 173 and Syed Akbar v. State of Karnataka 1979 Cri LJ 1374 that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as a hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.”

54 Submission of the learned counsel for the defence that PW-5 was otherwise a stock witness in view of his statement wherein he had stated that he had been posted in the CBI also does not advance the version of the prosecution. As noted supra, PW-5 has not supported the version of the prosecution; had he been a stock witness it would have been a vice-versa. This argument of the learned defence counsel is thus of no use to him.

55 All though in Ex.PW-3/A PW-3 has recited that there was a demand made by the accused on 26.9.1998 and thereafter it was reiterated that 27.9.1998 and again on 28.9.1998 yet in his version on oath in court the date of 27.9.1998 is missing. No singular sentence of the testimony of a witness can be extracted and read in piecemeal. It is the gist of the version of the witness which has to be noted to arrive at a

Crl.A. Nos.16/2006, 33/2006 & 46/2006 Page 46 of 54

conclusion as to whether this witness is trustworthy or not. Tested on this touchstone PW-3 by omitting to mention the date of 27.9.1998 in his deposition on oath in court would not tarnish his statement. On oath while describing the incident in detail he had stated that on 26.9.1998 he was asked to pay bribe but he could not arrange the said amount and sought time till 28.9.1998.

56 Section 20 of the Said Act speaks of a presumption in favour of the prosecution. Sub-section 3 of Section 20 has been relied upon and it reads as under:

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

(1).....

(2)

(3) Notwithstanding anything contained in Sub-section (1) and (2), the court may decline to draw the presumption referred to in either of the said Sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.”

57 Submission is that where the amount is so trivial as in this case i.e. the amount being a poultry sum of Rs.300/-; even if foundation of

the case has been set up by the prosecution, the amount being so petty the court in its discretion may refuse to draw the presumption in favour of the prosecution.

58 Section 20 has carved out a legal presumption; it has to be understood as so engrafted by the Legislature; sub-section 1 and sub-section 2 speak of the word 'shall'. It is mandated that where the accused had accepted gratification as a motive or reward to do an official act the presumption has to be drawn in favour of the prosecution. There is no doubt that the presumption is rebuttable but the onus then shifts upon the accused to show that the presumption sought to be drawn by the prosecution can be dispelled and rebutted. There is also no doubt to the proposition that this presumption can be invoked only after the foundational facts have been established by the prosecution. Sub- section 3 comes into play in those matters "if the gratification is so trivial that no inference of corruption may fairly be drawn". What is so trivial is always a matter of fact.

59 In the instant case submission of the learned counsel for the appellant that the amount of Rs.300/- is so small that this presumption may not be drawn in favour of the prosecution is an argument without

Crl.A. Nos.16/2006, 33/2006 & 46/2006 Page 48 of 54

force. The judgment relied upon by the learned counsel for the appellant on this count reported as JT 2009 (8) SC 415 A.Subair (supra) is also inapplicable. In that case there was a recovery of Rs.25/-. In the facts of the said case it could not be established that there was any proof of any demand or acceptance of the bribe; the evidence produced by the prosecution had neither any quality nor any credibility. It was in this factual matrix that the Supreme Court had noted that the High Court was not justified in drawing the presumption under Section 20 of the Said Act. The facts in the instant case are wholly distinct. The quality and the credibility of the evidence led by the prosecution has positive weight. In this background the amount of Rs.300/- may not be considered trivial especially since Rs.300/- was only the initial amount which had been agreed to be paid; the demand was for payment of Rs.300/- per month and Rs.20/- on every Sunday. This argument does not come to the aid of the appellants.

60 The defence of the accused persons is highly improbable. Their submission that the notification dated 11.8.1998 was in existence prior to this incident and which had to be followed in true letter and spirit by the accused persons which had led them to evict the complainant from Crl.A. Nos.16/2006, 33/2006 & 46/2006

the pavement for which the complainant has falsely implicated the accused is too far stretched. A perusal of the complaint dated 20.8.1998 itself clearly shows that two to three months prior to the date of the incident he had removed his rehri but thereafter since other squatters were allowed to sit on the pavement he felt discriminated and had also started squatting there; it was only at that time that the accused persons had demanded bribe for allowing the complainant to continue with his business in the pavement. This was not the line of cross-examination adopted by the defence counsel at the time of cross-examination of the witnesses; this defence appears to have emerged as an afterthought only at the time when the statement of the accused was recorded under Section 313 Cr. P.C. which was in the year 2005 i.e. much after the cross-examination of PW-3 which was in April, 2004; it was obviously under legal advice. There is a positive assertion of the complainant that the other squatters were allowed to sit in the pavement and PW-3 in his cross-examination has admitted that even on date he is continuing to ply his rehri on the same pavement shows that defence adopted by the accused is nothing but sham; as it has come on record that the squatters continue to squat there. This defence is false and improbable.

61 To establish a criminal misconduct under Section 7 of the said Act the following are the necessary ingredients:-

- (i) The accused at the time of offence, was expected to be, a public servant;
- (ii) That he accepted, or obtained, or agreed to attempt or attempted to obtain from some person a gratification;
- (iii) That such gratification was not illegal remuneration due to him; and
- (iv) That he accepted the gratification in question as a motive or reward for (a) doing or forbearing to do any official act;
(b) showing or forbearing to show favour or disfavor to someone in the exercise of his official function;
(c) rendering or attempting to render any service, disservice to someone, with the Central Government of any State Government or Parliament or the Legislature of any State or with any public servant.

62 The section speaks of “attempt to obtain”; a mere demand or solicitation by a public servant also amounts to commission of an offence under this Section.

63 For the offence under Section 13(1)(d) of the said Act the essential ingredients are as follows:

“13. Criminal Misconduct by a Public Servant. – (1) A public

servant is said to commit the offence of criminal misconduct.

(d) if he,

(i) by corrupt or illegal means obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iv) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;”

64 Sub- clause (d) of Sec. 13(1) which is equivalent to sub-clause (d) of Sec. 5(1) of the Act, 1947 has been divided into three distinctive parts as extracted above. A reading of this provision would make it amply clear that all the three wings of Clause (d), Sec. 13(1) are independent and alternative and disjunctive for constituting the ingredients for the offence under Sec.13(1)(d) as is clear from the use of the word or at the end of each sub-clause. In order to constitute a criminal misconduct under Section 13(1)(d) the action of a public servant deriving pecuniary advantage need not necessarily be connected with the performance of his official duty; this is the distinction from Section 7 of the said Act.

65 Section 34 of the IPC presupposes an active concert and common intent of the minds of the accused persons to convict the accused. All the accused were beat constables in the area; they had with a common purpose asked the complainant to pay the bribe money in order to run his business on the pavement.

66 The prosecution has been able to prove its case to the hilt. All ingredients stand proved. On no count does the impugned judgment call for any interference. The appeal is without any merit.

67 The minimum sentence prescribed under Section 7 of the Said Act is 6 months. The minimum sentence prescribed under Section 13(1)(d) read with Section 13(2) of the said Act is one year. Both the sentences are to run concurrently. The appellants have already been granted minimum sentence.

68 The appellants in their capacity as public servants i.e. as constables who were enjoined the duty to enforce the law had in fact abused the process of law by demanding a bribe from the complainant; the reason was to satiate their greed.

69 In this background even on the point of sentence this court is not inclined to interfere.

70 Appeals dismissed.

71 Appellants are on bail; their bail bonds are cancelled; sureties discharged.

72. Appellants Mohd.Toufiq and Pramod Kumar are present in person. They be sent to jail to suffer the remaining sentence.

73. Appellant Prem Chand is not present; he is stated to have gone to attend a wedding and he will surrender within two days. In case appellant Prem Chand does not surrender himself to the Jail Superintendant within two days from today i.e. by 20.02.2014 non-bailable warrants be issued against him and notice to his surety.

74 A copy of this judgment be sent to the concerned Jail Superintendant for intimation and compliance.

INDERMEET KAUR, J

FEBRUARY18, 2014

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