

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

RESERVED ON : October 07, 2013

DECIDED ON : March 13, 2014

+ CRL.A. 358/2006

P.P.SINGH

..... Appellant
Through : Mr.R.N.Mittal, Sr. Advocate with
Mr.Puneet Mittal, Mr.Ankit Goyal,
Mr.Ankur Aggarwal & Mr.Nitin
Sharma, Advocates.

Versus

C.B.I.

..... Respondent
Through : Mr.Manoj Ohri, Spl.P.P.

**CORAM:
MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Dr.P.P.Singh (Prem Pal Singh-the appellant) challenges the legality and correctness of a judgment dated 06.05.2006 in R.C.No.79(A)/96/CBI/ACB/N.Delhi, CC No.133/01 of learned Special Judge, Delhi by which he was held guilty under Section 7 and 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 (in short PC Act). By an order on sentence dated 08.05.2006, he was awarded rigorous imprisonment for five years with fine ₹5,000/- under Section 7 and

rigorous imprisonment for five years with fine ₹7,000/- under Section 13 (2) read with Section 13 (1) (d) of PC Act. Both the substantive sentences were to operate concurrently.

2. The prosecution case, as projected in the charge-sheet, is that on 02.11.1996 S.P.Singh lodged a complaint with CBI against Dr.P.P.Singh for demanding ₹1,000/- as illegal gratification for issuing essentiality certificate (in short : EC) and to pay it at his residence on 03.11.1996. The complainant in the complaint (Ex.PW-6/A) averred that his son Master Vishal, aged 3 years, was under treatment of the appellant at Safdarjung hospital. In January, 1996, he had demanded and obtained ₹20,000/- from him on the assurance of complete treatment of his son. After accepting ₹20,000/-, he postponed the operation on one pretext or the other. On 02.05.1996, at his instance, he admitted Vishal and his wife Anju Singh in Madhu Maternity Centre, Greater Kailash where on 03.05.1996 the appellant grafted bone in Vishal's leg after taking it from the leg of his wife. ₹4,000/- more were taken by the appellant for the said operation. Further case of the prosecution is that after registration of the case on 02.11.1996, a raiding team was constituted and two independent public witnesses Prem Kumar and Krishan Kumar were associated on 03.11.1996. The complainant-S.P.Singh (PW-6) was introduced to the

members of the trap team and independent witnesses. The complainant handed over ₹1,000/- in the form of Government Currency (G.C.) notes of ₹100/- denomination each and they were smeared with phenolphthalein powder. Prem Kumar was asked to act as shadow witness and to remain close to the complainant to overhear the conversation between him and the accused. Automatic receiver/recorder, earphone and audio cassette were handed over to Krishan Kumar with the direction to hear the conversation. Prem Kumar, panch witness, was directed to give signal by touching his head by both hands after the transaction of bribe was over. The complainant was directed to hand over the tainted money to the accused on his specific demand and not otherwise. Handing over memo (Ex.PW-2/A) recording pre-trap proceedings was prepared. Further case of the prosecution is that on 03.11.1996 at about 9.25 a.m. the trap team including the independent witnesses reached near the residence of the accused and took suitable positions. Prem Kumar and complainant-S.P.Singh went inside the house to contact the accused. At about 09.50 a.m. on getting the pre-appointed signal from shadow witness- Prem Kumar, as per plan, the trap party rushed towards the house of the accused who was found sitting on a bed in the entrance room. Insp.Anil Sharma and Yashvir Singh challenged him (the appellant) about demand

and acceptance of bribe of ₹1,000/- from the complainant. On instructions (of Insp. Yashbir Singh), PW-5 (Krishan Kumar) recovered tainted money of ₹1,000/- from the right side pocket of the kurta of the accused. Detailed post-trap proceedings (Ex.PW-2/C) were conducted at the spot. The accused was apprehended and arrested. Statements of witnesses conversant with the facts were recorded. On completion of investigation, a charge-sheet was submitted against the accused; he was duly charged and brought to trial. In support of its case, the prosecution examined 15 witnesses. In 313 statement, the accused pleaded false implication; denied his complicity in the crime; and examined DW-1 D.P.Singh, Principal, Government Boys Senior Secondary School, Mayur Vihar in defence. On appreciating the evidence and after considering the rival contentions of the parties, the trial court by the impugned judgment convicted the appellant for the offences mentioned previously. Being aggrieved and unsatisfied, the appellant has preferred the appeal.

3. Appellant's Senior counsel strenuously urged that the trial court did not appreciate the evidence in its true and proper perspective. The appellant had no motive to demand and accept the bribe of ₹1,000/- from the complainant on 2/3.11.1996 as EC had already been issued by him to the complainant and he (complainant) had obtained reimbursement

of expenses incurred on the treatment of his son and wife. There was no occasion for the complainant to demand EC for the second time and it was not at all required to claim medical reimbursement. Senior counsel further urged that sanction under Section 19 of the POC Act was not valid and it was granted in a mechanical manner without application of mind. PW-1 (M.Kannan), Deputy Secretary, was not the competent authority to grant sanction (Ex.PW1/A) as he was not empowered to remove Dr.Prem Pal Singh from service. He further contended that entire proceedings were manipulated in connivance with the complainant. The prosecution was unable to establish beyond doubt that the tainted money was recovered from the pocket of the kurta of the accused as kurta wash was not produced before the court. The prosecution witnesses have given inconsistent version as to from where the recovery was effected. PW-5 (Krishan Kumar) in the cross-examination disclosed that ₹1,000/- were recovered during house search. The cassette played before the trial court was not clear and its contents were not audible. It did not present true picture and its authenticity is doubtful. It was further pointed out that the complainant had got an animus against the appellant as he was not satisfied with the treatment given to Vishal. He was aggrieved for the expenses incurred by him and wanted return of ₹20,000/- from the

complainant. Refusal to part with ₹20,000/- as demanded by him was the real cause to falsely foist a case against him. PW-6 (S.P.Singh) admitted in the examination-in-chief that the motive to lodge complaint was unsuccessful operation. DW-1 (D.P.Singh) on the basis of the documents categorically proved that the complainant had already been reimbursed of the payment for the treatment of his wife and son for the period May, 1996 to July, 1996 vide application dated 31.07.1996. PW-3 (Prem Kumar) completely denied if any transaction of bribe took place in his presence. The prosecution was unable to establish beyond doubt that any bribe amount was paid on specific demand by the appellant. The serious infirmities from which the prosecution evidence suffered were overlooked by the trial court. Reliance was placed on *G.S.Mathataoo vs. CBI*, 2012 (3) JCC 1655; *State of Karnataka vs.Ameerjan* 2007 (11) SCC 273; *State vs. Surya Sankaram Karri* 2006 (7) SCC 172; *State vs.C.Nagrajaswamy* 2005 (8) SCC 370; *Panalal Domodar vs.State* AIR 1979 SC 1191; *Hakumat Rai vs.State* 1982 (22) DLT 370; *Pyare Lal vs.State* 2008 (149) DLT 425; *Prem Raj Meena vs.CBI* 2011 (1) CRIMES 730; *Udai Singh vs.State* 2011 (182) LDT 284; *Prem Singh Yadav vs.CBI* 2011 (178) DLT 529; *Nepal Singh Rawal vs.CBI* 2011 (185) DLT 479; *L.K.Jain vs.State* 2005 (124) DLT 371; *Sunil Kr.Sharma*

vs.State 2007 (139) DLT 407; *Dev Raj Arora vs.State* 2012 (2) JCC 1045 and *Kanwar Singh Kakkar vs. State* 2011 (3) JCC 1917.

4. Learned Standing Counsel for CBI while supporting the judgment urged that the trial court has taken into consideration all the relevant contentions and has given cogent reasons to base conviction. The complainant has categorically proved that ₹1,000/- were demanded and paid to the appellant at his residence for issuance of EC. The appellant filled up the name of the 'disease' in the blank EC handed over to him at his residence and he put date 02.11.1996 over it. The bribe amount was recovered from the pocket of the kurta of the appellant where he had kept it after accepting from the complainant with his right hand. Washes of the right and left hands gave positive result and the solution turned red/pink. Minor discrepancies and contradictions in the testimony of the prosecution witnesses do not affect the basic structure of the prosecution case. Complainant's statement has been corroborated on all material facts by independent witnesses. They had no ulterior motive to falsely implicate the accused. Sanction granted for prosecution of the appellant is valid.

5. Admitted position is that during the relevant period, the appellant was working as Orthopedic Surgeon in the Department of

Orthopedics, Safdarjung hospital. It is also not denied that he (the appellant) used to provide treatment to Vishal, aged about three years, and had prescribed various medicines from time to time as reflected in OPD cards.

The appellant has denied if any operation of the child Vishal was conducted by him at a private nursing home. The prosecution, however, has collected and proved cogent evidence to establish that while Vishal was under the appellant's treatment at Safdarjung hospital, bone-grafting was done by him at Madhu Maternity Centre, Greater Kailash on 03.05.96. PW-12 (Dr.Balkishan) disclosed that in April, 1996 the appellant had told him that he was in private practice and wanted to perform a surgery of his relation at his centre. On 03.05.1996, he came along with a patient. In the evening, he was informed that Dr.P.P.Singh had conducted operation upon the mother and child. He also proved letter head (Mark PW-12/A) of the nursing home. PW-13 (Insp.Yashvir Singh) seized various documents pertaining to the operation of Vishal and Anju from the complainant by memo Ex.PW13/C. The complainant-S.P.Singh deposed that the accused had conducted operation of his son on 03.05.1996 in a private nursing home belonging to his friend at N-225, Greater Kailash. On the next day Dr.B.K.Tiwari, owner of the nursing

home, on being informed that ₹20,000/- had already been paid to the appellant, declined to charge anything more from him. On 05.05.1996, the accused asked him to get his son discharge from the nursing home. The accused instructed Dr.Bholla to prescribe medicines and told him to pay ₹4,000/- for the nursing home expenses. In the cross-examination, he denied the suggestion that on the advice of Dr.Madhu Tiwari, he had got the operation of his son and wife conducted at the nursing home of her husband. The witness explained that at that time he did not know if the nursing home belonged to Dr.B.K.Tiwari and his wife. He further elaborated that there were only two attendants: Narender Kumar, (compounder) and Mini (nurse). The operation continued for about two hours. His wife and son remain admitted there from 2nd May, 1996 till 5th May, 1996. PW-7 (Anju Singh), complainant's wife, PW-8 (Vas Dev) , PW-10 (Moti Lal) and PW-11 (Anil Kumar Arya) all have corroborated the complainant's version. The court has no valid reasons to disbelieve them. Apparently, the operation on the child was conducted by the appellant while working in the government hospital. Needless to say that for performing the operation at a private nursing home belonging to his friend, the appellant must have charged necessary fee and medical expenses which he has opted not to disclose. The payment of ₹20,000/-

by the complainant to the appellant at that time can be accepted. During arguments, it was appellant's plea that motive to lodge complaint was to get back ₹20,000/-.

6. PW-3 (Prem Kumar), PW-5 (Krishan Kumar), PW-6 (complainant-S.P.Singh) and PW-13 (Insp.Yashvir Singh) are star witnesses to appreciate the prosecution case. PW-3 (Prem Kumar) denied any transaction of bribe in his presence. He, however, admitted his visits to CBI office and the residence of the accused on 03.11.1996. The Special Public Prosecutor cross-examined him after seeking court's permission. In the cross-examination, he deposed that complainant-S.P.Singh had conversation with Dr.P.P.Singh in his presence about some medicines. They remained there for about 15 minutes and also took tea. He admitted that he was under no fear or pressure when he put signatures on the papers prepared by CBI at the spot. He admitted his signature on handing over memo (Ex.PW-2/A) prepared at CBI; recovery memo (Ex.PW-2/C); EC (Ex.PW-2/F); Washes (Ex.P-1, P-2 and P-3); Kurta (Ex.P-4); stickers of cassettes (Ex.P-5 and P-6); and cloth wrappers (Ex.P-7, P-8 and P-9) prepared at the residence of Dr.P.P.Singh. He further admitted that cassette was played in his presence and memo (Ex.PW-2/D) was prepared. Its transcript (Ex.PW-2/E) was prepared in

his presence and he put his signatures at point-A. In the cross-examination by the accused, he reiterated that all the papers were signed by him without reading and understanding the contents. No document was prepared in his presence as he was sitting in an adjoining room.

Presence of this witness in the trap team who raided appellant's residence on 03.11.1996 has not been challenged in the cross-examination. Signature of the witness on various documents confirms his presence at the relevant time at the appellant's residence.

7. PW-5 (Krishan Kumar) independent witness from NDMC, Palika Kentra, proved pre-trap proceedings recorded at CBI office on 03.11.1996. He further deposed that Prem Kumar and complainant-S.P.Singh went inside the house of Dr.P.P.Singh. On receipt of signal from Prem Kumar, all the trap team members rushed inside the house. ₹1000/- were recovered from the house search of the accused. Memo (Ex.PW-2/A), Annexure (Ex.PW-2/B) and recovery memo (Ex.PW-2/C) bear his signatures. Since this witness resiled from his previous statement, Sr.Public Prosecutor cross-examined him with the leave of the court. In the cross-examination, he admitted that his statement under Section 161 Cr.P.C. was recorded by CBI; powder treated notes were given to S.P.Singh with the direction to give those to Dr.P.P.Singh or any

other person on demand; blank EC was also given to the complainant. He expressed ignorance about recovery of GC notes from the pocket of the kurta of the accused. He was unable to say if he recovered tainted GC notes from the right side kurta pocket of the accused. He was confronted with portion A to A of recovery memo (Ex.PW-2/C). He, however, admitted that hand-washes and kurta pocket wash were taken. He was unable to say about the colour resulted on the washes. He admitted that colour of the washes of two bottles turned dark pink and one bottle as light pink. He admitted his signatures on various exhibits (Ex.P-1 to P-10). He further admitted that the number of G.C.notes (Ex.P-11/1 to 10) noted in Annexure (Ex.PW-2/B) were compared with the GC notes recovered from the residence of Dr.P.P.Singh and both were found similar and correct. He also admitted that all the documents were signed by him after assuming these to be correct. In the cross-examination by the accused, the witness elaborated that they had reached the house of the appellant at about 08.00 a.m. He denied the suggestion that no currency notes were recovered from the house of the accused or that the currency notes were planted. He further denied that he was forced to put signatures on the documents by CBI officers.

On scrutinizing the testimony of the witness, it reveals that he has not supported the prosecution regarding recovery of tainted money from the appellant. He, however, admitted his signatures on various memos and the documents. The court has no reasons to disbelieve his version that he was amongst the members of the trap team who visited the residence of the appellant on 03.11.1996 and post-trap proceedings were conducted in his presence.

8. Crucial testimony is that of PW-6 (S.P.Singh), the complainant, who has dwelt upon the prosecution case at length. He deposed that on 02.11.1996, he had taken his wife to Safdarjung hospital for examination by the accused and demanded EC to get reimbursement from the department. The accused demanded ₹1000/- from him for the same. He was not willing to pay the bribe and lodged the complaint (Ex.PW-6/A). As instructed, on 03.11.1996 at 07.30 a.m. he went to CBI office; pre-trap proceedings (Ex.PW-2/A) were conducted. They left CBI office in two official vehicles for the residence of the appellant. As directed, he and Prem Kumar went to the residence of the accused who opened the door and offered seat on the sofa. On his request to complete the EC of his wife, the accused wrote the name of the 'disease' and told him to fill up the names of the medicines etc. on his own. He asked the

accused regarding reimbursement of ₹20,000/- but he told him not to talk about that. He further deposed that when he sought permission to leave, the accused asked for ₹1000/-. On his asking about the amount brought by him, he told that whatever amount was asked by him, he had brought that. He gave ₹1000/- to the accused who counted with both hands and kept it in the right side pocket of his kurta. In the meanwhile, shadow witness went out to give the signal. Inspectors Anil Kumar and Yashvir Singh rushed inside the room where they were sitting and apprehended the accused. On enquiry, he informed that he had given ₹1000/- to the appellant. Krishan Kumar was asked to recover the tainted amount of ₹1000/- from the pocket and it was so recovered. The accused was asked to put off his kurta. The right hand, left hand and right side kurta pocket washes were taken in post raid proceedings. A ₹10/- note was recovered from the pocket of the accused along with ₹1000/- and its wash was also taken. Recovery memo (Ex.PW-2/C) was prepared. The witness identified his signatures on various memos and exhibits. He further deposed that transcription of conversation (Ex.PW-2/E) recorded in the cassette was prepared. He identified his voice and voice of the accused at various stages when the cassette was played in the court. In the cross-examination, the witness admitted that there was disturbance in the

complete tape played before the court. On 02.11,1996, it was a Saturday and he alone had gone to CBI office. He denied the suggestion that the door of the house was not opened by the accused. He elaborated that he remained at the house of the accused from 08.45 a.m. to 03.30 p.m. He denied the suggestion that there was no demand or acceptance of ₹1000/- by the appellant. He further stated that the accused did not ask for the introduction of Prem Kumar. He told that when the hand-washes and pocket washes were taken, he was sitting in an adjoining room. He denied the suggestion that the appellant was falsely implicated as he was not satisfied with the improvements in the leg of his son.

Scanning the testimony of this witness, reveals that despite lengthy and searching cross-examination, no material discrepancies could be elicited to discard the version narrated by him. Visit of the complainant with Prem Kumar on 03.11.2006 at his residence was not challenged in the cross-examination. The accused did not put any suggestion as to what was the purpose of the complainant to visit his house on Sunday.

9. Another crucial witness PW-13 (Insp.Yashvir Singh) proved the pre-trap proceedings (Ex.PW-2/A) recorded by him after complaint (Ex.PW-6/A) was lodged on 02.11.1996 and FIR (Ex.PW-13/A) was

registered. After recording the proceedings vide handing-over memo (Ex.PW2/A), they left CBI office at 08.45 a.m. and reached the residence of the accused at R.K.Puram at about 09.25 a.m. The complainant and shadow witness went to the house of the accused and the door was opened by the appellant. After some time, on getting pre-appointed signal from Prem Kumar, they rushed towards the room and challenged the appellant regarding the demand and acceptance of the bribe. On that, he became perplexed and pointed out towards his right side pocket of the kurta where he had kept the bribe amount. Complainant and shadow witness also disclosed that the accused had accepted the bribe with his right hand, counted the same with both hands and kept it in his right side pocket of the kurta. The tainted money was recovered from the right side pocket of the kurta of the accused by Krishan Kumar. A ₹10/-rupee GC note was found in the said pocket besides the tainted money. Post trap proceedings (Ex.PW-2/C) were conducted and necessary hand-washes and pocket wash were taken. He further deposed that the complainant disclosed that EC of Anju Singh was filled up and the date put by the accused over it was 02.11.1996 instead of 03.11.1996. In the cross-examination, he stated that trap team had left in two official vehicles i.e.one gypsy and one van. The house of the accused was in a government colony and there was a

hedge around his flat. He denied the suggestion that the accused never demanded any money and nothing was recovered from him or that no conversation was recorded. Apparently, no discrepancy emerged in the cross-examination to discard the version given by him. No ulterior motive was assigned to the witness with whom the appellant had no prior acquaintance or animosity to falsely implicate the accused. Again no suggestion was put to the witness that the trap team had not visited his residence that day. Nothing was suggested as to how and under what circumstances ₹1000/- were recovered. The material facts deposed by the witness remained uncontroverted in the cross-examination.

10. The incriminating circumstances were put in 313 Cr.P.C. to the appellant to offer opportunity to explain. He denied all the allegations completely. He claimed that only complainant's son was under his treatment and he had prescribed some medicines for him. He was falsely implicated when he refused to do illegal and unlawful acts on the request of the complainant. In the additional 313 statement, he admitted that prescriptions on OPD cards (Ex.PW2/X-1 to Ex.PW2/X-7) and Ex.PW-14/DA were in his hand writing while treating Anju and Master Vishal in Safdarjung hospital. He further admitted that EC (Ex.PW2/F) was in his

handwriting and was issued in the name of Smt.Anju Singh to her husband S.P.Singh.

11. On scrutinizing the statements of PW-6 (S.P.Singh) and PW-13 (Insp.Yashvir Singh), it stands established that ₹1,000/- were recovered from the pocket of the kurta of the appellant which were accepted by him from the complainant on specific demand at his residence. There are no sound reasons to disbelieve the complainant's version. The appellant had provided treatment to his son and wife and had no grievance against him any time. On 03.11.1996, the complainant along with a stranger had visited his house and had conversation with him about medicines at his residence. The appellant served the complainant and his companion with tea and entertained them. Had there been any animosity, the appellant must not have permitted him (the complainant) to enter his residence or to serve tea on Sunday. He did not give any specific purpose of complainant's visit at his residence. In 313 statement, he pleaded false implication by the complainant as he refused to do illegal and unlawful acts on his request. He did not elaborate as to what kind of illegal and unlawful act, the complainant was asking him to do. In such an eventuality, there was no occasion for him to allow entry to him in his house. No such suggestion was put to the complainant in cross-

examination. It was argued that the complainant nurtured grievance against the appellant due to unsuccessful operation of his wife and son and was expecting return of ₹20,000/-. This plea has no force as the appellant throughout the trial emphatically denied if he had conducted any such operation at Madhu Maternity Centre. Initially, the appellant denied if he had given any treatment to complainant's wife at Safdarjung hospital. However, when confronted with OPD card (Ex.PW-14/DA) in additional statement under Section 313 Cr.P.C., he admitted it as correct. He also admitted that EC in the name of Anju Singh (Ex.PW-2/F) was in his hand writing and under his signatures and it contained his official stamp as Chief Medical Officer, Central Institute of Orthopaedic, Safdarjung Hospital, New Delhi. The prosecution has established that this EC was recovered on 03.11.1996 after his apprehension at his residence. The appellant did not offer any explanation as to how and under what circumstances EC (Ex.PW-2/F) was recovered; when and why he had put signatures on it giving the name of disease only and putting the date 02.11.1996. Since 03.11.1996 was holiday being Sunday, the appellant could not issue any such EC on that day. It lends credence to the complainant's version that on 02.11.1996, he went to the appellant for EC of his wife and on 03.11.1996 it was signed by the appellant at his

residence. The appellant also admitted that the prescription on OPD cards (Ex.PW2/X-1 to Ex.PW2/X-7) was in his hand writing and signatures. It appears that while providing treatment to Vishal and Anju at Madhu Maternity Centre, the appellant prescribed the medicines to enable the complainant to claim reimbursement from his Department on the OPD cards issued from Safdarjung hospital during the relevant period. Cash memos from various chemists duly verified by the appellant in the name of Anju and Vishal separately merely mention 'prescribed by Dr.P.P.Singh'. These do not reflect if these medicines were given to the complainant's wife or son on the prescription issued by the concerned doctor of 'Safdarjung hospital'. The prosecution has produced on record various prescription slips at Madhu Maternity Centre on the strength of which medicines were purchased from chemists during the period operation was done. It is true that the complainant had already obtained reimbursement on the basis of EC issued by the appellant for the medical expenses incurred for the period from May, 1996 to July, 1996 on the treatment of his wife and son. That does not absolve the appellant as there are specific allegations that he had demanded ₹1,000/- to issue EC on 02.11.1996 to enable the complainant to get reimbursement of expenses for the treatment of his wife. The said EC was issued on 03.11.1996 at his

residence. The CBI has also relied upon the conversation recorded in the cassette whose transcript is (Ex.PW-2/E) where there is specific mention of 'dubara claim kar lo'. The conversation recorded in the cassette also corroborates complainant's version. There is no specific denial that the cassette did not contain the appellant's voice.

12. PW-5 (Krishan Kumar), panch witness, has supported the prosecution on all material facts except to deviate that the tainted money ₹1000/- was recovered during house search of the complainant. In the cross-examination, he did not categorically deny that the tainted money was recovered from the pocket of the appellant's kurta and merely pretended that he did not remember the said fact. Number of memos were signed by this witness without any fear or pressure. It appears that in an attempt to help the complainant, he did not claim recovery of the tainted money from his 'pocket'. However, PW-13 (Insp.Yashvir Singh) with whom there was no animosity or acquaintance has implicated the appellant and deposed about the recovery of the tainted money from his pocket on his instruction by PW-5 (Krishan Kumar). Reliance has also been placed upon the hand-washes and kurta wash. The appellant did not explain as to how the colour of hand-washes and kurta washes turned pink. Merely because pocket wash of the kurta could not be produced due

to broken bottle, it does not mean that the recovery was not effected from the complainant. PW-15 (Ms.Neelam Arora) proved CFSL report (Ex.PW-15/A) and deposed that exhibits LHW (Left Hand-Wash), RHW (Right Hand-Wash), Note wash, RSPW, (Right Side Pocket Washes) gave positive test for presence of phenolphthalein and sodium carbonate powder. These findings have not been challenged in the cross examination. The prosecution also relied upon the statement of PW-2 (T.R.Nehra), ESO (documents) in CFSL, who proved his findings on Ex.PW-2/X-12, Ex.PW-2/X-13 and Ex.PW-2/X-14. He opined that the writer of the standard writings Mark A-1 to A-14, S1 to S34 and S76 to S113 was the person responsible for writing the questioned writings mark Q-1/1, Q-2/1, Q-3/1 and Q-4/1. In Ex.PW2/X-14 he opined that the writer of standard writings mark A-15 to A-20 and S-53 to S-70 was the person responsible for writing the questioned writings mark Q-5 and Q-6. The questioned rubber stamp impressions mark Q-7 and Q-8 matched with the specimen rubber seal impressions marked S-71 to S-75. There is no serious challenge to the findings recorded by the expert evidence.

The trial court aptly relied upon the judgments *Hazari Lal vs.State (Delhi Administration) AIR 1980 SC 873; State of U.P. vs.Zakaullah 1998 CRL.L.J.863 and State of Kerala vs.P.K.Ghosh AIR Crl.A.No.358/2006*

1984 SC 1453 to conclude that merely because PW-3 (Prem Kumar) and PW-5 (Krishan Kumar) did not support the prosecution on certain facts, their statements cannot be taken to throw away the prosecution case in its entirety. The judgments relied upon by the trial court categorically state that evidence of the complainant and that of the TLO can be acted upon even without corroboration by independent witnesses.

In *State of U.P. Vs. Dr.G.K.Ghosh* (1984) 1 SCC 254, in similar circumstances Dr.Ghosh was found guilty of demanding and accepting illegal gratification from the father of a patient under his treatment at a government hospital and was convicted under Section 5 (1) (d) of PC Act. Allegations against him were that he demanded ₹250/- as illegal gratification from the complainant to issue a certificate to enable him to get a loan or advance for the medical expenses. Sham Lal and Thakur Prasad were associated in the trap team. Sham Lal was not examined during trial on the ground that he was won over by the defence. Thakur Prasad was not examined as his evidence would have been of a repetitive nature. The trial court excluded from consideration the evidence of PW-5 (Ram Singh) in view of the criticism leveled by the defence in regard to his selection. The conviction was based primarily on the deposition of the complainant and Trap Laying Officer coupled with

circumstantial evidence. Dealing with the criticism that the police officer leading the raiding party was an interested witness, the Supreme Court observed:

“It is now time to deal with the criticism urged as a matter of course in the context of the police officer leading the raiding party namely that he is an interested witness. This is true, but only to an extent a very limited extent. He is interested in the success of the trap to ensure that a citizen, who complains of harassment by a Government officer making a demand for illegal gratification, is protected and the role of his department in the protection of such citizens is vindicated. Perhaps it can be contended that he is interested in the success of the trap so that his ego is satisfied or that he earns a feather in his cap. At the same time it must be realised that it is not frequently that a police officer, himself being a Government servant, would resort to perjury and concoct evidence in order to rope in an innocent Government servant. In the event of the Government servant concerned refusing to accept the currency notes offered by the complainant, it would not be reasonable to expect the police officer to go to the length of concocting a false seizure memo for prosecuting and humiliating him merely in order to save the face of the complainant, thereby compromising his own conscience. The court may therefore, depending on the circumstances of a case, feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the police officers even if the trap witnesses turn hostile or are found not to be independent. When therefore besides such evidence there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the prosecution case,. The present appears to be a case of that nature. If the circumstantial evidence is

of such a nature that it affords adequate corroboration to the prosecution case, as held by the learned Special Judge, the appeal must succeed. If on the other hand the circumstantial evidence is considered to be inadequate to buttress the oral testimony, the appeal necessarily must fail.”

13. Placing implicit reliance on the statement of the complainant, the Supreme Court held :-

“By and large a citizen is somewhat reluctant, rather than anxious, to complain to the Vigilance Department and to have a trap arranged even if illegal gratification is demanded by a Government servant. There are numerous reasons for the reluctance. In the first place, he has to make a number of visits to the office of Vigilance Department and to wait on a number of officers. He has to provide his own currency notes for arranging a trap. He has to comply with several formalities and sign several statements. He has to accompany the officers and participants of the raiding party and play the main role. All the while he has to remain away from his job, work, or avocation. He has to sacrifice his time and effort whilst doing so. Thereafter, he has to attend the court at the time of the trial from day to day. He has to withstand the searching cross-examination by the defence counsel as if he himself is guilty of some fault. In the result, a citizen who has been harassed by a Government officer, has to face all these hazards. And if the explanation offered by the accused is accepted by the court, he has to face the humiliation of being considered as a person who tried to falsely implicate a Government servant, not to speak of facing the wrath of the Government servants of the department concerned, in his future dealings with the department. No one would therefore be too keen or too anxious to face such an ordeal. Ordinarily, it is only when a citizen feels oppressed by a feeling of being wronged and

finds the situation to be beyond endurance, that he adopts the course of approaching the Vigilance Department for laying a trap. His evidence cannot therefore be easily or lightly brushed aside. Of course, it cannot be gainsaid that it does not mean that the court should be oblivious of the need for caution and circumspection bearing in mind that one can conceive of cases where an honest or strict Government official may be falsely implicated by a vindictive person to whose demand, for showing favours, or for according a special treatment by giving a go-bye to the rules, the official refuses to yield.

In *State of U.P. Vs. Zakaullah* 1998 (1) SCC 577, the Supreme Court held:

“The Complainant's evidence was jettisoned on the mere ground that since he had a grouse against the delinquent public servant he might falsely have implicated the latter. Such a premise is fraught with the consequence that no bribe giver can get away from such stigma in any graft case. No doubt PW5 would have been aggrieved by the conduct of the respondent. The very fact that he lodged a complaint with the Anti-Corruption Bureau is reflective of his grievance. Such a handicap in his evidence may require the court to scrutinise it with greater care, but it does not call for outright rejection of his evidence at the threshold. A pedantic approach rejecting the evidence of a complainant simply on the premise that he was aggrieved against the bribe-taker, would only help corrupt officials getting insulated from legal consequences.”

It further held that DSP (TLO) who arranged the trap had no interest against the respondent. But the verve shown by him to bring his trap to a success is no ground to think that he had any animosity against

the delinquent officer. The evidence of such a witness can be acted on even without the help of any corroboration.

It further observed that the two remaining reasons i.e. nobody overheard the demand made by the respondent for bribe and that the amount was not found in the right pocket but only in the left pocket are flippant grounds which should never have merited consideration.

14. In the case in hand, the money was recovered from the pocket of the accused-appellant at his residence. A presumption under Section 20 PC Act becomes obligatory. It is a presumption of law and casts an obligation on the court to apply it in every case brought under Section 7 of the Act. The appellant did not dislodge or rebut the presumption. He did not explain as to why and in what connection he had accepted ₹1000/- from the complainant at his residence. Since the accused has failed to disprove the presumption, it can safely be held that he received the amount towards gratification.

15. In the instant case, the prosecution produced direct evidence of PW-6 (complainant-S.P.Singh) and PW-13 (Insp.Yashvir Singh) coupled with circumstantial evidence in the form of recovery of EC (Ex.PW-2/F) some portion of which was filled by the appellant in his own hand-writing and signatures and CFSL report (Ex.PW-15/A) regarding

washes which gave positive test for presence of phenolphthalein and sodium carbonate powder.

16. In the *State of U.P. Vs. Zakaullah (supra)* the reasoning of the High Court that reliability of the trap team was impaired as the solution collected in the phial was not sent to the Chemical Examiner, the Supreme Court held:-

“We have not come across any case where a trap was conducted by the police in which the phenolphthalein solution was sent to the Chemical Examiner. We know that the said solution is always used not because there is any such direction by the statutory provision, but for the satisfaction of the officials that the suspected public servant would have really handled the bribe money. There is no material discrepancy in the evidence regarding preparation of recovery-memo and the minor contradiction mentioned by the learned single judge is not worth considering.”

17. Learned Senior counsel relied on *Kanwar Singh Kakkar vs.State* 2011 (3) JCC 1917 to urge that examination/treatment of patients by a government doctor and thereby charging professional fee, can be held to be have violated only the Government instructions which itself has not termed private practice as ‘corruption’ under the Act. The said act would fall within the ambit of ‘misconduct’ to be dealt with under the Service Rules but would not constitute criminal offence under the P.C.Act. I find no merit in this argument as no such plea was taken during trial by the

appellant that any amount was accepted by him from the complainant as his professional fee for treating the patient in a private nursing home. In fact, in 313 statements, the appellant categorically denied demand, acceptance or recovery of any money. Moreover, the payment of ₹1,000/- was accepted not as a professional fee but as illegal gratification for issuance of EC.

18. The next limb of argument is about the legality and validity of sanction under Section 19 PC Act. The appellant did not challenge cognizance taken by the trial court against the appellant for committing offences under Sections 7 and 13 P.C.Act during trial. PW-1 (M.Kannan) deposed that on 15.12.1997 he was posted Dy. Secretary, Government of India, Ministry of Health and Family Welfare. The President of India, was a competent authority to remove Dr.Prem Pal singh, CMO, from service. He accorded the sanction for prosecution “By order and In the name of President of India.” After going through the CBI reports and other relevant documents including statements of witnesses, etc. and after application of mind, he accorded sanction Ex.PW-1/A. He admitted in the cross-examination that he, as Dy.Secretary to the Government of India, was not empowered to remove Dr.Prem Pal Singh from service. He denied that he put signatures on Ex.PW-1/A mechanically.

I have gone through the sanction order (Ex.PW-1/A) which bears signature of PW-1(M.Kannan) as Dy.Secretary to Government of India. The sanction order is on behalf of the President of India. It reads as under:

*“No.C.14011/14/96-VIG.
Government of India
Ministry of Health & Family Welfare

*Nirman Bhawan, New Delhi
Dated 10.03.1998*

O R D E R

Whereas it is further alleged that Sh.P.P.Singh, (Prem Pal Singh), s/o Shri Kundan Singh, while working as CMO (Ortho) in Safdarjung Hospital, New Delhi under Ministry of Health, New Delhi during November, 1996, demanded on 02.11.1996 a sum of ₹1,000/- at Safdarjang Hospital from Shri S.P.Singh, s/o Shri Ruhla Singh, r/o A-85/2, Kundan Nagar, Delhi for issuing ‘Essentiality Certificate’ in respect of Smt.Anju Singh and Master Vishal (wife and son of Shri S.P.Singh) and accepted the said amount on 03.11.1996 at his residence.

And whereas it is further alleged that Shri P.P.Singh had conducted operation of bone-grafting on the above said Master Vishal and Smt.Anju Singh on 03.05.96 at a private nursing home i.e.Madhu Maternity Centre, N-225, Greater Kailash, N.Delhi after charging ₹20,000/- and ₹4,000/- from Sh.S.P.Singh, while he was duty bound to conduct the said operation at the hospital itself.

And whereas it is further alleged that Sh.P.P.Singh accepted the above said sum of ₹1,000/- on 03.11.96 at his

residence H.No.321, Sector-III, R.K.Puram in presence of independent witnesses Shri Prem Kumar, Peon in the office of New Delhi Municipal Corporation, Palika Kendra, New Delhi from the complainant Shri S.P.Singh in his right hand and kept in the right side pocket of kurta.

And whereas it is further alleged that immediately after giving the pre-appointed signal to the CBI officers, Shri P.P.Singh was caught hold by the CBI officials and ₹1,000/- consisting of ₹100/- denomination each were recovered from the right-side pocket of Kurta of Shri P.P.Singh in the presence of trap party and which were counted and tallied for its numbers while handing over memo dated 03.11.96. The recovery memo to this effect was prepared at the spot and Shri P.P.Singh was produced in court on 4.11.96 and was remanded to Judicial Custody.

And whereas it is further alleged that Central Forensic Science Laboratory vide its report No.CFSL-97/D-129/2572 dated 4.8.97 on the document cited and CFSL-97/D-277/2899 10.10.97 on the documents as well as CFSL-97/D-277/2901 dated 11.9.97 on the specimen rubber seal impression which confirmed the handwriting of the Dr.P.P.Singh, CMO, Safdarjung hospital.

And whereas the said acts constitute offence punishable under section 7 and 13 (1) (d) r/w 13 (2) of PC Act, 1988.

And whereas the President being the Competent Authority to remove from office the said Dr.P.P.Singh, working as C.M.O.(Ortho) in Safdarjang hospital, New Delhi under the Ministry of Health, after fully and carefully examining the material placed before him with regard to the said allegation and the circumstances of the case considered as the said Dr.P.P.Singh should be prosecuted in the Court of Law for the said offence/offences.

Now therefore, the President do hereby accord sanction under 19 (1) (C) of the Prevention of Corruption Act, 1988 (Act No.49 of 1988) for the prosecution of the said

Dr.P.P.Singh for the said offence/offences and any other offences punishable under other provisions of law in respect of the act aforesaid and for taking cognizance of the said offence by a court of competent jurisdiction.

(BY ORDER AND IN NAME OF THE PRESIDENT)

*sd/-
(M.KANNAN)
Dy.Secretary to the Govt.of India”*

19. On scanning the sanction order as a whole, it transpires that PW-1 (M.Kannan) merely authenticated the Order issued in the name of President of India. The trial court in para 15 of the impugned judgment paid attention to the Authentication (Order and other Instruments) Rules, 1958 framed by the President of India on 25th October, 1958, in exercise of the powers conferred by Article 77 (2) of the Constitution as under sub rule 1 of Rule 2, Deputy Secretary to the Government of India was authorized to authenticate the orders and instruments made and executed in the name of the President. The trial court also relied upon *Major E.G.Barsay vs.State of Bombay AIR 1961 SC 176,2* where it was held that if an order is issued in the name of the President and is duly authenticated in the manner prescribed in Article 77 (2), there is irrebuttable presumption that the order is made by the President. Where the impugned

order does not comply with the provisions of Article 77 (2) it is open to the party to question the validity of the order on the ground that it was not made by the President. Where, however, the evidence establishes that the order was made by the Deputy Secretary on behalf of Central Government in exercise of powers conferred on him under the rules delegating such powers to him, the order cannot be questioned.

In *Jagdish Chandra Makhija vs.State (CBI)* 2011 (3) JCC 1847 this Court referred to Government of India (Transaction of Business) Rules, 1961 and the Government of India (Allocation of Business) Rules, 1961 framed under Article 77 (3) of the Constitution of India and accepted the contention of the Prosecutor that Finance Minister in the name of President of India is the authority competent and empowered to grant sanction for the prosecution of the Appellant, who was the Assistant Director in the Enforcement Department during the relevant time. It further observed that Ex.PW-1/A was the document of authentication of sanction which was accorded by the sanctioning authority. As per the Authentication (Orders and other Instruments) Rules, 1958 framed under Article 77 (2) of the Constitution of India, PW-2 being the Under Secretary of the defence department was empowered to issue, sign and

authenticate the order of sanction granted by the sanctioning authority i.e. Finance Minister in the name of the President.

20. No suggestion was put in the cross-examination to PW-1 (M.Kannan) that the concerned authority competent to remove the appellant did not apply mind while granting sanction. Learned counsel for CBI stated at Bar that the judgment relied upon by the appellant's counsel *G.S.Mathataoo vs. CBI* 2012 (3) JCC 1655 is of no assistance as the Supreme Court vide order dated 09.11.2012 in Petition(s) for Special Leave to Appeal (Crl.) Nos.7932-7933/2012 has clarified that the impugned order of the High Court shall be confined to the parties of the said case. I find no illegality or irregularity in the Sanction Order.

21. The findings of the trial court are based upon fair appraisal of the evidence and no deviation is called for. Exclusion of testimony of PW-3 and PW-5 who made a volte face in the trial court, would not discredit the cogent and clinching evidence of the complainant and T.L.O. to record conviction. Moreover it is a settled preposition of law that the evidence of a hostile witness remains the admissible evidence and it is open to the court to rely upon the dependable part of that evidence which it is found to be acceptable and duly corroborated by some other reliable evidence available on record. (*Himanshu @ Chinty vs. State of NCT of Delhi* JT

2011 (1) SC 123). Resultantly, testimony of PW-3 and PW-5 can be considered to the extent they have corroborated the version narrated by complainant and TLO, supplemented by circumstantial evidence.

22. In the light of the above discussion, the findings of the guilt and the order of conviction recorded by the trial court are affirmed. Sentence order dated 08.05.2006 reveals that the appellant was aged around 56 years. He had lost his father on 17.02.2006 and his mother expired two years before that. He was the eldest member of the family to look after his younger married brother who was suffering from cancer and was under treatment in AIIMS. Nominal roll dated 25.05.2006 reveals that the appellant remained in custody for about four months. He has suffered ordeal of trial/appeal for about 17 years. He is not involved in any other criminal case and is the first offender. Taking into consideration all these mitigating circumstances, the sentence order is modified and the substantive sentence under both the counts is reduced to Rigorous Imprisonment for one year each. Other terms and condition of the sentence order are left undisturbed. Both the substantive sentences under both the counts shall run concurrently. The appellant is directed to surrender before the Trial Court on 21.03.2014 to serve the remaining period of sentence and deposit the unpaid fine (if any) or else undergo

default sentence. The Registry shall transmit the Trial Court records forthwith along with the copy of this order.

(S.P.GARG)
JUDGE

March 13, 2014
sa