

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

**CRL.A. No. 327 of 2008**

Reserved on: October 28, 2014

Decision on: November 5, 2014

**MUKESH MEENA**

..... Appellant

Through: Ms. Meenakshi Arora, Senior  
Advocate with  
Mr. D. Thanai, Mr. V. Madhukar  
and Mr. Vasav  
Anantraman, Advocates.

versus

**STATE (GOVT. OF NCT OF DELHI)**

..... Respondent

Through: Ms. Isha Khanna, APP.

**CORAM: JUSTICE S. MURALIDHAR**

**JUDGMENT**

**05.11.2014**

1. This appeal is directed against the impugned judgment dated 18<sup>th</sup> March 2008 passed by the Special Judge, Delhi in CC No. 67/02 convicting the Appellant for the offences under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 ('PC Act') and the order on sentence dated 24<sup>th</sup> March 2008 whereby for the offence under Section 7 the Appellant was sentenced to undergo rigorous imprisonment ('RI') for 3 years and a fine of Rs.20,000 and in default to undergo simple imprisonment ('SI') for 6 months and for the offence under Section 13 (2) he was sentenced to undergo an identical sentence. Both sentences were directed to run concurrently.

***The complaint***

2. The case of the prosecution is that the Complainant Murari (PW-3) was allotted Plot No. 2312 Gautam Puri by the Slum Department of the

Municipal Corporation of Delhi ('MCD'). The adjoining Plot No. 2311 was allotted to Mohd. Suleman (PW-10). PW-3 and PW-10 out of their free will exchanged the plots. Thereafter PW-3 started constructing a house on Plot No. 2311. It is the case of the prosecution that PW-3 was harassed by the Appellant who was a Junior Engineer ('JE') in the Slum Department of the MCD. The Appellant is stated to have demanded a bribe of Rs.10,000 from PW-3 and threatened to cancel the allotment if it was not paid. On 8<sup>th</sup> March 2002, the Appellant visited the plot and asked PW-3 to pay him the bribe amount on the following day i.e. 9<sup>th</sup> March 2002 between 1 and 1.30 pm failing which he would get the construction stopped. PW-3 is stated to have told the Appellant that he could not afford to pay the amount and could arrange for only Rs.5,000. The Appellant is stated to have asked him to come with Rs.5,000 on the following day between 1 and 1.30 pm.

### ***Pre-raid proceedings***

3. PW-3 is stated to have gone to the Anti Corruption Branch ('ACB') on 9<sup>th</sup> March 2002 at around 11 am and got a complaint (Ex.PW-4/A) recorded by Inspector Sheel Nidhi (PW-11) in the presence of the *panch* witness Raghuvinder (PW-8). PW-3 produced 6 government currency (GC) notes of Rs.500 and 20 GC notes of Rs.100 and their serial numbers were recorded by PW-11 in the pre-raid report (Ex.PW-4/B). PW-11 treated the GC notes with phenolphthalein and gave a demonstration of its effect. The treated GC notes were handed over to PW-3 to be given to the Appellant at the time of the raid. PW-8 was directed to remain close to PW-3 to overhear the conversation and give the pre-determined signal once the transaction was complete.

### ***The raid proceedings***

4. At around 12.15 pm, PW-11 along with Inspector M.A. Salam, the

Investigating Officer ('IO') (PW-9), PW-3, PW-8 and others left the ACB in a Government vehicle for Gautam Puri and reached there within an hour. While PW-9 and others stayed back, PWs-3 and 8 went to the house of the Appellant. After talking to the wife of the Appellant, PW-3 returned and informed PW-8 that the Appellant had called him to his office. Thereafter the raiding party left for the MCD Office at Gautam Puri.

5. In his deposition, the *panch* witness PW-8 stated that at the MCD Office, he and PW-3 went to a room and stood near the door. Seven to eight persons were standing in the room and some conversation was going on between them. PW-3 then started talking to the Appellant for about 10 minutes. According to PW-8 he was "unable to hear the conversation between the accused and the Complainant because there was a noise." However he stated that "Thereafter, Complainant took out those treated GC notes and extended the same towards the accused. At that time, accused was busy in writing and I had seen that accused pushed the extended hand of the Complainant back. After about one minute, accused Mukesh Kumar Meena stood from his seat and come forward by moving towards the door and in this process accused became very close to the Complainant. Due to the movement of 7/8 persons in that room, I was not able to see the exact position of Complainant and the accused. Thereafter, Complainant came out and informed me that accused had accepted the bribe money and kept the same in his pocket and asked me to give the pre-determined signal. Thereafter, I had given the pre-determined signal by hurling my right hand over my head."

6. The raiding team then entered and PW-11 disclosed his identity to the Appellant and challenged him for having accepted the bribe.

According to PW-11, the Appellant became perplexed and sought pardon. PW-8 informed PW-11 that the Appellant had demanded and accepted the bribe from PW-3 with his left hand and kept the same in the left side pocket of his pant.

7. There is some inconsistency as to who recovered the treated GC notes from the left side pant pocket of the Appellant. According to PW-8, PW-11 took the search of the Appellant and recovered those treated GC notes whereas according to PW-11, PW-8 recovered the treated GC notes.

8. The serial numbers of the recovered GC notes were tallied with those noted in the pre-raid proceedings. The left hand wash and the left pant pocket wash of the Appellant turned pink. The solutions were transferred to clean bottles which were subsequently sealed and labelled. The Appellant was arrested and the recovered articles were handed over to PW-9 for further investigation.

### ***The trial***

9. Eleven witnesses were examined by the prosecution. In his statement under Section 313 Cr PC, when asked about the evidence appearing against him, the Appellant accepted as correct that PW-3 had exchanged his plot with PW-10 and had started constructing a house on Plot No. 2311. However, he denied that he had ever demanded or accepted any bribe from PW-3. On being questioned about the raid proceedings and the washes of the left hand and left side pant pocket turning pink, the standard reply of the Appellant was that 'I do not know' or 'it is incorrect'. In response to Question No. 26 regarding his having been kept in a lock up and the recovered articles being kept in the police *Malkhana*, he answered as under:

“I was falsely arrested in this case at the behest of brother-in-law of the Complainant. I do not know anything about the deposits of exhibits with MHCM.”

10. When asked whether he had anything else to say, he stated as under:

“This is a false case foisted on me at the behest of brother-in-law of the Complainant. The brother-in-law of the Complainant approached me after he was allotted the aforesaid plot for the purposes of exchanging the same with one Suleman. He wanted the exchange plot should be transferred in the name of the Complainant. For this purpose the brother-in-law of the Complainant contacted me several times and I told him that I do not have any power or authority to do the same. He insisted me to get this job from my seniors which I refused and he was annoyed and got me falsely implicated in this case.”

### ***The defence evidence***

11. The Appellant examined himself as DW-1. He now claimed that the brother-in-law of PW-3 had repeatedly approached him for transferring the papers of the plot of PW-10 to the Complainant and vice versa and that the Appellant told him that it was not within his power to do so. He repeated this answer to them when they again contacted him in February 2002. He claimed that on 9<sup>th</sup> March 2002, when he was sitting in his office, the brother-in-law of PW-3 came and sat on a chair in front of his seat. He then stated:

“After finishing my work, I looked at him and thereafter, the brother-in-law of Murari shook hand with me and in the process passed on certain money in my hands. I immediately put those currency notes on the table and I asked brother-in-law of Murari to lift the currency notes and go away and while I was trying to get up from the chair, brother-in-law Murari lifted those currency notes from the table and inserted the same in my left pocket of my pant. Again said, I do not remember exactly the pocket. However, I took those currency notes from my pocket and put on the table. I again asked him to get out from my office after lifting the money. When I tried to go out of office, I was intercepted by

4/5 persons who were sitting in my office were asked to leave the office. Thereafter, my search was taken and my pant was taken into possession. Thereafter, the wash of my hands were taken. Thereafter, I was taken to a hospital. Then I was taken to Police Station Anti Corruption Branch and there certain papers were prepared and my signature were obtained and at about 1.00 am in the night, I was lodged in the Police Station Civil Lines. I never demanded, accepted and nothing was recovered from me. The money was picked up from the table. I have been falsely implicated. I can identify the brother-in-law of Murari if produced before. I saw Murari for the first time in the Court when he came to depose in this case.”

12. In the cross-examination by the Additional Public Prosecutor (‘APP’) he denied that he had introduced the brother-in-law of PW-3 because he had won over PW-3 during the trial. He further stated “It is correct to suggest that the wash of my hand turn pink. I do not remember whether the wash of my pant also turned pink. It is incorrect to suggest that about 1.40 pm I had demanded and accepted Rs.5000/- from Murari for above said purpose.”

### ***The judgment of the trial Court***

13. The trial Court on an analysis of the evidence came to the conclusion that the case against the Appellant had been proved by the prosecution beyond reasonable doubt. The trial Court noted that since PW-3 had turned hostile, the prosecution failed to prove by direct evidence the demand of the bribe amount by the Appellant. However, the fact that the *panch* witness PW-8 was present at the spot was not denied. No suggestion was put to PW-8 that the treated GC notes were forcibly inserted in the pant pocket of the Appellant by the brother-in-law of PW-3 and that the Appellant then took them out and placed them on the table. Such a suggestion was also not put to PW-11, the RO. As long as it was proved that the treated GC notes were recovered from the left pant pocket of the Appellant it was immaterial whether it was

recovered by PW-8 or PW-11. The trial Court further observed that the conviction could even be based on the evidence of PW-11 if it inspired confidence. The trial Court disbelieved the stand of the Appellant that the brother-in-law of PW-3 was present at the time of the raid and even assuming he was present he had not played a part in the handing over of the bribe amount. There was conscious acceptance of the bribe amount by the Appellant.

14. Accordingly, the trial Court convicted the Appellant for the offences mentioned and sentenced him in the manner already noted.

#### ***Submissions of counsel***

15. Ms. Meenakshi Arora, learned Senior counsel appearing for the Appellant, submitted that in the present case, with PW-3 having turned hostile, the prosecution had miserably failed to prove the demand of the bribe amount. She submitted that once the demand was not proved and it emerged in the evidence of PW-8 that when PW-3 tendered the treated GC notes to the Appellant, the latter pushed back his hand, it was clear that there was no conscious acceptance of the bribe amount. Further PW-8 could not hear the conversation between the Appellant and PW-3. Therefore, the second element of conscious acceptance of the bribe amount by the Appellant was also not proved. As regards the recovery of the treated GC notes from the Appellant, that by itself, in the absence of proof of demand and acceptance, could not form the basis for convicting the Appellant. Reliance was placed on the decisions in *C.M.Girish Babu v. CBI (2009) 3 SCC 779*, *A Subair v. State of Kerala (2009) 6 SCC 587*, *State of Punjab v. Sohan Singh (2009) 6 SCC 444*, *Rakesh Kapoor v. State of Himachal Pradesh (2012) 13 SCC 552*, *Banarsi Dass v. State of Haryana (2010) 4 SCC 450*, *State of Punjab v. Madan Mohan Lal Verma (2013) 14 SCC 153*,

*State of Kerala v. C.P. Rao (2011) 6 SCC 450* and the decision dated 21<sup>st</sup> February 2011 of this Court in *Prem Raj Meena v. Central Bureau of Investigation* (Criminal Appeal No. 963 of 2008).

16. In reply, Ms. Isha Khanna, learned APP for the State submitted that it was not as if PW-3 had turned completely hostile. He admitted taking along with his brother-in-law Rs.5000 to the ACB and also admitted his signature on the complaint. He also confirmed the pre-raid proceedings and going for the raid with PW-8. She pointed out that in his statement under Section 313 Cr PC, the Appellant did not speak about the money being thrust into his pocket by the brother-in-law of PW-3. No such suggestion was also given to PW-3 in his cross-examination. She submitted that with the raid proceedings having been signed by PW-8 and with the evidence of PW-8 revealing conscious acceptance of the bribe amount, the burden shifted to the Appellant to rebut the presumption under Section 20 of the PC Act.

17. Ms. Khanna submitted that there PW-11 could not be disbelieved merely because he was a police officer. Referring to the evidence of PW-7, she submitted that the Appellant did have the authority to check unauthorised construction and, therefore, it was not improbable that he had demanded a bribe from PW-3 not to stop the construction that was going on in Plot No. 2311. She referred to Explanation (d) to Section 7 of the PC Act which attracted the offence even when a person demanding the bribe amount did not have the authority to perform or refrain from performing the official act in question.

18. In response, Ms. Arora submitted that the prosecution had failed to prove its case beyond reasonable doubt whereas the standard of proof as far as the Appellant was concerned for rebutting the presumption

under Section 20 of the PC Act was only preponderance of probabilities. She submitted that the prosecution had to prove its case on the strength of its own evidence and could not seek to prove its case through the weaknesses, if any, in the defence evidence.

### ***Decision of the Court***

19. From the evidence of PW-3, the Complainant it is plain that in the Court for the first time he introduced his brother-in-law into the picture. According to him, his brother-in-law paid Rs.5,000 to the NDMC officials who had demanded Rs.10,000. He claimed that the Appellant “never demanded any money from me.” When cross-examined by the APP, PW-3 claimed that his brother-in-law had given statement to the ACB but accepted that there was no signature of his brother-in-law on Ex.PW-4/A. He claimed that “Ex.PW-4/A was blank when I signed the same.” Interestingly, the following sentence occurs in his cross-examination by the PP: “I had stated to police that on 8<sup>th</sup> March 2002 accused came to my plot and told me that if I did not pay Rs.10,000/- to him on next day by 1.00/1.30 pm to him, he would stop the construction on my plot.” What is also interesting is that he admitted to going to the ACB with Rs.5,000 and that PW-8 was present when his statement was recorded. He stated as under:

“When I reached in Anti Corruption Branch I took Rs.5,000/- with me. It is correct that I had taken six currency notes of Rs.500/- each and rest of the notes were of Rs.100/- each. It is correct that one witness Raghuvinder Singh was present in Anti Corruption Branch when my statement was recorded. It is correct that I handed over aforesaid amount to police and the same were smeared with a powder.”

20. The above statements of PW-3 support the case of the prosecution about the Appellant visiting his plot on 8<sup>th</sup> March 2002 and having demanded Rs.10,000 and stating that he would stop the construction if

PW-3 did not pay the amount on the following day. It also confirms fact that PW-3 went to the ACB with Rs.5,000 and gave the GC notes in question in the presence of PW-8 and that his statement was indeed recorded at the ACB. This is further evident from the following answers given by PW-3:

“It is correct that I myself of my own along with my *sala* approached Anti Corruption Branch for making a complaint for bribe being demanded from me.”

21. Although there are other answers given in the same cross-examination to the effect that his signatures were taken on blank papers, and that even the pre-raid proceedings (Ex.PW-4/B) was blank when he signed it, it appears that PW-3 did come to the ACB and give a complaint and also took the GC notes amounting to Rs.5,000 with him. Therefore, the Court is not prepared to view the evidence of PW-3 as being completely hostile to the case of the prosecution as far as the above stages of the raid are concerned.

22. PW-3 also confirmed having gone for the raid proceedings with PW-8. He stated “It is correct that I had accompanied public witness Raghuvinder Singh along with police officials in the official vehicle to Gautam Puri, Badarpur.” He also stated “It is correct that I along with the Complainant reached at my house where my wife told me that the accused had come to our plot and had left the message to send me to his office. It is correct that thereafter I along with *panch* witness reached at the office of accused at Gautam Puri.” He confirmed his signature on Ex.PW-4/C i.e. the raid proceedings. Although he denied the fact of the left hand wash and pant pocket wash of the Appellant turning pink and that the accused was arrested in his presence, he confirmed his signatures on Ex.PW-4/E, Ex.PW-4/F and Ex.PW-4/G which were the search, arrest and recovery memos, etc. He also admitted to signing the

slips which were affixed on the bottles containing the hand washes. He was able to identify signature on the slip in the inner pocket of the pant.

23. When one peruses the complaint, the pre-raid proceedings and the raid proceedings, the claim of PW-3 that his signatures were taken on blank papers appears palpably false. There can be no doubt that PW-3 was won over by the Appellant. At the same time from the portions of his depositions, extracted above, it appears that he did not turn completely hostile and in fact supported the prosecution on the material aspects of the case.

24. On the aspect of the demand of the bribe amount, apart from PW-3 who in his cross-examination admitted that it was correct that he on his own with his brother-in-law approached the ACB “for making a complaint for bribe being demanded from me”, the *panch* witness PW-8 speaks of what transpired at the time of raid. He no doubt stated that when PW-3 took out the treated GC notes and extended them towards the Appellant, he was “busy in writing” and “pushed the extended hand of the Complainant back.” However, he added that after about a minute, the Appellant stood from his seat came forward and moved towards the door and “in this process the accused came very close to the Complainant.” Thereafter PW-3 came out and informed PW-8 that the Appellant had accepted the bribe money.

25. As rightly pointed out by the learned APP the fact that the bribe amount was recovered from the left side pant pocket of the Appellant shows that he had accepted it and kept it there. This would indicate ‘conscious acceptance’ of the bribe amount. Perhaps realising this difficulty compounded by the fact that he had not come up with a satisfactory explanation, the Appellant when deposing as DW-1 sought

to suggest that the brother-in-law of PW-3 had first shaken his hand and in the process passed on the bribe money. The Appellant stated that he immediately put it on the table and asked the brother-in-law to lift them and leave. However, as the Appellant was trying to get up from the chair, the brother-in-law “lifted those currency notes from the table and inserted the same in my left pocket of my pant.” Thereafter the Appellant is supposed to again have taken out those GC notes from his pocket and put them on the table.

26. No suggestion was put to any of the prosecution witnesses and in particular to PW-3 or PW-8 that there was any forcible thrusting of the GC notes into the pant pocket of the Appellant by the brother-in-law of PW-3. This appears to be an afterthought. The left hand wash and the left pant pocket wash, both turning pink, corroborated the fact of conscious acceptance of the bribe amount by the Appellant. The Appellant had not denied the washes turning pink and that is perhaps the reason that he sought to come out with an alternate explanation. Unfortunately, the above alternate explanation finds no corroboration from any witnesses including PWs-3 and 8. It was rightly rejected by the trial Court.

27. A lot of emphasis was placed by learned Senior counsel for the Appellant on the inconsistency in the depositions of PWs-3, 8 and 11 as to who recovered the GC notes from the left pant pocket of the Appellant. As rightly noted by the trial Court as long as the evidence proves unmistakeably that the treated GC notes were recovered from the left pant pocket of the Appellant, it really does not matter who recovered it. The raid proceedings appear to indicate that on instructions of PW-11, it was PW-8 who recovered it. The fact that PW-8 states that it was PW-11 who recovered it still does not create

any doubt as to the factum of recovery of the GC notes from the left pant pocket of the Appellant. The Court rejects the contention that there was no reliable evidence regarding the manner of recovery of the GC notes.

28. While the legal position that mere recovery of the treated GC notes by itself does not constitute proof of the commission of the offence under Sections 7 and 13 (1) (d) of the PC Act is well settled in the decisions cited by learned Senior counsel for the Appellant, the present case is one where the evidence of the Complainant, the *panch* witness and the RO are consistent with each other on the material particulars. The *panch* witness and the RO corroborate each other on what transpired during the raid proceedings. In ***Madan Mohan Lal Verma*** (supra), it was emphasised that:

“....the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found 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. In a proper case, the court may look for independent corroboration before convicting the accused person.”

29. In the present case, the Court is satisfied that the foundational facts have been proved beyond reasonable doubt by the prosecution and that the Appellant has failed, even on preponderance of probabilities, to

rebut the statutory presumption under Section 20 of the PC Act. For the same reason, the Court is also of the view that the decisions in *A. Subair* (supra) and *C.P. Rao* (supra) do not come to the assistance of the Appellant since the prosecution has discharged the burden of proving its case beyond all reasonable doubt regarding the demand and acceptance of illegal gratification by the Appellant.

30. As regards the submission that the Appellant had no authority to take any decision as to cancellation of the allotment made to the Appellant, reference may be made to Explanation (d) to Section 7 of the PC Act which reads as under:

“A motive or reward for doing.” A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

31. In any event it has come in the evidence of PW-7 that it was the duty of the Appellant to check unauthorised constructions. PW-3 stated that the Appellant had threatened to book him for unauthorised construction if he did not meet the demand of bribe. Consequently, the decision in *State of Punjab v. Sohan Singh* (supra) which turns on its own facts is of no assistance to the Appellant. The decision in *Rakesh Kapoor* (supra) reiterates the well settled law that mere recovery by itself cannot prove the charge of the prosecution “in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.” In the present case the Court is satisfied that the Appellant voluntarily accepted the treated GC notes knowing them to be the bribe amount.

### ***Conclusion***

32. For the aforementioned reasons, the Court finds no error having

been committed by the trial Court in convicting the Appellant for the offences under Sections 7 and 13 (1) (d) read with Section 13 (2) of the PC Act.

33. Considering that the incident is of 2002, and the Appellant has undergone the ordeal of trial and appeal for more than 12 years, the Court modifies the sentence awarded to the Appellant for each of the offences under Sections 7 and 13 (2) of the PC Act to RI for a period of 18 months with no alteration to the fine amounts and default sentences. Both sentences shall run concurrently.

34. The bail bond of the Appellant is cancelled and he is directed to surrender forthwith to serve out the remainder sentence.

35. The appeal is disposed of in the above terms.

**NOVEMBER 05, 2014**  
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**S. MURALIDHAR, J.**