

A.F.R.

RESERVED JUDGMENT

Reserved on: 04.01.2024

Delivered on: 13.02.2024

Court No. - 16

Case :- CRIMINAL APPEAL No. - 879 of 2004

Appellant :- Avinash Kumar Yadav

Respondent :- State of U.P.

Counsel for Appellant :- Vivek Shrotria, Abhay Veer Singh

Counsel for Respondent :- Govt. Advocate

W I T H -

Case :- CRIMINAL APPEAL No. - 982 of 2004

Appellant :- Ghan Shyam Singh

Respondent :- State of U.P.

Counsel for Appellant :- Balkeshwar Srivastava, Gaya Deep Singh, Hari Om Gupta, Sachin Srivastava

Counsel for Respondent :- Govt. Advocate

Hon'ble Shamim Ahmed, J.

1. Both the aforesaid cases arises out of the same R.C. number, hence both of them are being heard simultaneously and disposed of by a common judgment. For the sake of convenience, Criminal Appeal No. 879 of 2004, Avinash Kumar Yadav v. State of U.P., is being taken as the main leading case.

2. This case is taken up in the revised call.

3. Heard learned counsel for the parties.

4. These appeals assail the correctness of the judgment and order dated 31.03.2004 passed by learned Special Judge, Anti-Corruption (West), Lucknow, in Case No. 5 of 1999, State v. Avinash Kumar Yadav & anr., registered as R.C.No. 27(A)/1998, under Sections 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988, and Section 120B, I.P.C., whereby the Special Judge has convicted the accused-appellants namely, Avinash Kumar Yadav and Ghanshyam Singh, and sentenced each of them under Section 120-B, I.P.C. for 1 year's rigorous imprisonment and under section 7 of Prevention of Corruption Act, 1988 for two years rigorous imprisonment with fine of Rs.300/-, and under Section 13(2), read with Section 13(1)(d) of Prevention of Corruption Act, 1988 for one year's rigorous Imprisonment with fine of Rs.200/-. In default of payment of fine, imprisonment of one month has been awarded. All the sentences were directed to run

concurrently.

5. The facts and circumstances leading to this case in a nutshell are that a case was registered under the Central Bureau of Investigation (C.B.I.), Lucknow Branch on the basis of written complaint given by one Shri Surendra Kumar Singh S/o Sri Nakshad Singh on 25.11.1998 regarding demand of Rs.2,000/- by the appellants as bribe for processing of the matter pertaining to fasli rin (agricultural loan) of Rs. 25000/- applied by the father of the complainant in Basti Gramin Bank, Branch Vishesharganj, District Basti.

6. On the premise of the said complaint dated 25.11.1998, the Superintendent of Police, C.B.I./S.P.E., Lucknow, directed Sri R. Sengar, Inspector, to take necessary action in the matter. Sri Sengar, Inspector constituted a Police Party and after completing the necessary formalities, alongwith witnesses, raided the Vishesharganj Branch of the Basti Gramin Bank, and the accused persons were caught red-handed on the spot. After completing all the formalities, the amount recovered from the appellants was sealed and stamped and hands of the accused were got washed with the Sodium Carbonate Solution and the Solution got pink-coloured.

7. After completion of investigation, chargesheet was submitted against the accused-appellants. The charge against the accused-appellants under Section 120-B, I.P.C. and Section 7 and 13(2), read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 were framed, to which they denied and claimed for trial.

8. To bring home the guilt of the appellants, the prosecution has examined as many as five witnesses, namely, Sarvashree R.P. Srivastava, Surendra Kumar Singh, Ram Ujagar Rajbhar, Raviraj Sengar and Sudhakar Pandey.

9. PW-1 Shri R.P. Srivastava, is Chairman, Basti Gramin Bank, Basti. He has granted sanction to prosecute the appellants, which is Exhibit Ka-1. He has certified Exhibit Ka-1.

10. PW-2 Shri Surendra Kumar Singh is complainant in this case. He has stated that there was a file in the Basti Gramin Bank, Branch Vishesharganj, District Basti, in the name of his father regarding crop-loan. Loan was not granted by the Bank. Regarding loan, he regularly went to the said Branch. Initially in this file, all the proceedings were done by the Branch Manager himself. He had demanded all the papers. The appellant Avinash Kumar Yadav had gone to his house for survey regarding loan, and he kept on contacting him. It was getting late in sanction of loan, therefore, he met with the

Branch Manager, who asked him to contact Mr. Avinash Kumar Yadav. Mr. Avinash Kumar Yadav kept on making him running and then he said to contact the Ghanshyam Singh, Messenger. Both, the appellants told that all the work is executed by the Manager himself and they will not do anything without taking money. Ten percent rate of the Manager was open and he executes work of any person only after accepting the money. This witness has further stated that the appellant Avinash Kumar Yadav demanded Rs. 2500.00 for getting the work done by the Manager, but after much request he said to get him granted a discount of Rs. 500.00 from the Manager. It is further stated that this witness did not want to give money to Sri Yadav, therefore, he had come to Lucknow and gave a written complaint of the episode on 25.11.1998, which is Ext. Ka-3. This witness has certified Ext. Ka-3. This witness has further stated that Sri R. Sengar, Inspector asked him to meet alongwith his father on the next day, i.e. 26.11.1998 at Faizabad Railway Station. He alongwith his father arrived at Faizabad Railway Station at about 9.45 a.m. After about 10-15 minute C.B.I. personnel including Sri R. S. Sengar, Inspector; Sri Rohit Srivastava, Inspector; Sri B.B. Bhatt, S.I.; One more S.I. and one constable, also arrived there. From there all people came to main Branch of S.B.I. at Faizabad, from where two witness, Sri Tripathi and Sri Pandey, accompanied them. At about 1.00 p.m. all people stopped at some distance from Vishesharganj Branch of the Basti Gramin Bank. This witness has also stated at the S.B.I. Branch he had handed over the notes to the C.B.I., which were to be given as bribe, but before that C.B.I. People had given a blank paper, mixed with some powder. Then they got his hand washed, then the water turned Pink. The rupees that were given to the C.B.I. Their numbers were noted. That very powder was also mixed on the notes and these notes were kept in the complainant's upper pocket by Sri Sengar. This witness has stated that only Rs. 2000.00 was brought, which were in the denominations of Rs. 500.00 each. After reaching the Vishesharganj Branch, he went inside the Bank alongwith his father, witness Pandey Ji and two other persons of the village and contacted the Manager. The Manager said, it is 1.00 O'clock now. Now thing would happen and asked to come on the next day at 10.00 a.m. All people returned from there.

11. On the next day, the complainant alongwith his father arrived at Faizabad Railway Station. After half-an-hour C.B.I. people also arrived there. Thereafter, two witnesses, namely, Rajbhar and Agarwal also arrived there. Phenol Powder was rubbed on a blank paper and the powder was also rubbed on the fingers of Sri Agarwal his fingers were got washed, then the colour of the water got pink. Then that paper and solution were

separately sealed and stamped and the remaining powder was also kept separately. Powder was again applied on the Notes and Notes were kept in his pocket by Sri Sengar. Sri Sengar said not to lay hands in the pocket and said to take the notes out only to give, when demanded. Sri Rajbhar was asked to go with the complainant inside the Bank. Sri Rajbhar said that after giving money, he will indicate to C.B.I. by putting his goggles off and wiping it by his handkerchief (rumal). After applying powder on the notes, the number of these notes were again noted and all the proceedings were done in writing. This witness has further stated that all people proceeded from Faizabad at about 10-10.15 a.m. by an Ambassador Car and reached at Vishesharganj Branch of Basti Gramin Bank at 11-11.15 a.m. He, his father and Sri Rajbhar went to the Bank. As soon as he entered the premises, the Manager called him by sending the Messenger Gyan Prakash. When he went to the Manager's Room, remaining people remained standing in the varandah. Manager asked him, today his work would be done. When the complainant replied in 'yes', the Manager asked Rs. 2000.00 from him. Further statement of this witness is that the Manager had asked him to meet the appellant Avinash Kumar Yadav and before he could meet Sri Yadav, the Manager had said something to him silently. Thereafter, he alongwith his father sat on the chairs in front of Sri Yadav. Village witnesses and Sri Rajbhar kept standing behind them. All three witnesses were asked to sit on the Bench and writing of file got started and on papers signatures of the complainant's father and witnesses were taken. This witness has further stated that he was sent alongwith the appellant Ghanshyam Singh to another room, which was loan section. In the room, the Sri Singh said, the Manager is demanding the money. Sri Rajbhar also entered the room, on which the Sri Avinash Kumar Yadav/appellant objected and said to go outside. Sri Yadav asked him to give money to Ghanshyam. The complainant handed over that very notes to Ghanshyam Singh. When Ghanshyam singh was counting the notes, Sri Avinash came out on his seat, but the Manager immediately sent him inside the room that Sri Rajbhar should be ousted from the room. Then the appellant Ghanshyam Singh handed over that money to the appellant/Sri Yadav. On being indicated by Sri Rajbhar, S.I. Sri Bhatt and S.I. Sri B.D. Singh rushed towards loan section and caught the hand of the appellant/Sri Yadav, in which he was holding the money. On this the Manager objected, but in the interregnum, the other people of the C.B.I. also arrived there and Sri Rohit Srivastava showed his identity-card to the Manager and announced the trap. Thereafter, hands of the appellants, Sri Avinash Kumar and Sri Ghanshyam Singh were washed by the solution of Sodium Carbonate the solution was kept in separate bottles and Sri

Agarwal checked the notes from the pre-trap memo, the notes were the same. Thereafter, all the proceedings conducted there was noted down. It is further stated that the solution was kept in separate bottles, in which the solution of left hand of the appellant/Sri Avinash Kumar was turned pink, while the solution of his right hand was not changed, but the solution of both the hands of the appellant Ghanshyam Singh was got pink-coloured. The recovered notes were kept in an envelope and sealed and stamped on the spot. This witness has attested the signatures of his father Nakshed Singh on the withdrawal-slip which is Ext. Ka-4. This witness has also attested Exts. Ka-5/1 to Ka-5/26.

12. PW-3 Ram Ujagar Rajbhar has deposed on oath that he was posted as Inspector in Central Excise and Customs, Faizabad Region. On 26.11.1998, the Asstt. Commissioner called him and directed to go alongwith the C.B.I. Personnel and in this regard he had given written instruction on the letter given by the C.B.I. Personnel. On that day they were asked to arrive at Faizabad Railway Station at 9.00 A.M. On 27.11.1998 at about 9.00 A.M. he and Sri A.K. Agarwal had reached outside Faizabad Railway Station. There, the C.B.I. Team was present, who introduced him with the complainant and his father Sri Nakshed Singh. C.B.I. People also showed him written complaint of the complainant, which he had read and made one-two questions from the complainant Surendra Singh about this. This witness has further stated that the C.B.I. People were carrying Phenolphthalin Powder. They were also carrying Sodium Carbonate Solution. They applied the powder to a piece of paper and gave that paper to Sri Agarwal and hand of Sri Agarwal was washed in that solution. Solution turned Pink-coloured. The complainant had given four notes, each of denomination of Rs. 500/-, on which C.B.I. People applied the powder and keeping them in an envelope they themselves had placed it in the pocket of the complainant. The numbers of that notes were also noted down by the C.B.I. personnel and the solution by which hands of Sri Agarwal was got washed, was also kept in a bottle and was sealed. This all proceeding was noted down by the C.B.I. Personnel. This witness has further stated that C.B.I. Personnel had asked him to go inside the Bank alongwith the complainant and see and hear everything that happens there. He also said to indicate the C.B.I. Personnel by wiping his goggles with handkerchief and shaking it after the money is handed over. This witness has attested his signature on the pre-trap memo, Ext. Ka-8. This witness has almost repeated the version stated by the complainant. This witness has attested his signatures on Ext.-1, Exts. 2/1 to 2/4, 3, 4, 5, 6/1 to 6/4, and 7/1 to 7/2.

13. PW-4 Shri Raviraj Singh Sengar is T.L.O. of this case. This witness has stated that in November 1998 he was posted as Inspector, C.B.I. in the Lucknow Branch of C.B.I. He was entrusted with the investigation of Case No. 27/98 and was appointed as T.L.O. On receiving the copy of complaint, he had made inquiries from the complainant Surendra Kumar Singh. This witness has attested the signatures of the then Superintendent of Police Sri Javed Ahmed on the F.I.R., Ext.-10. Further statement of this witness is that after receiving the copy of F.I.R. he constituted a team of C.B.I. officers and arranged the other necessary materials. Further, he has reiterated the statement given by the complainant. This witness has attested his signatures on the post trap memo, Ext. Ka-9. This witness has also attested the site-plan, Ext. Ka-11.

14. PW-5 Shri Sudhakar Pandey, Inspector, C.B.I./A.C.B., Lucknow, is second investigating officer in this case. According to statement of this witness, investigation of this case was entrusted to him on 1.12.1998 by the erstwhile investigating officer Sri R.S. Sengar. During investigating he took the statements of witness and sent the demonstration solution of both hands of the accused persons for investigation to C.F.S.L., New Delhi, report of which was received on 17.12.1998, which is available on record in original as Ext. VIII. Further statement of this witness is that after receiving consent for prosecution of both the accused persons, he submitted chargesheet, Ext. Ka-12 under his signatures on 22.2.1999.

15. Incriminating evidence and circumstances were put to the appellants under Section 313 Cr.P.C. in which they have stated that no recovery as alleged has been made and the prosecution sanction has been granted under pressure of C.B.I. It has further been stated that they did not demand or take any bribe. All false papers and statements have been prepared and no fair investigation did take place due to pressure of officers of C.B.I. The documents have been prepared and proved in a misdirected manner and charge-sheet has been submitted against the appellants, without there being any incriminating evidence against them. In defence, only the appellants have been examined.

16. The appellant Avinash Kumarh in his statement recorded under Section 313, Cr.P.C. has stated that statement regarding getting the discount from the Manager is wrong. Complaint was made against the Manager, which was changed later on. He has also stated that this all proceeding is forged. On 26.11.1998, he was in the Bank. He also stated that the complainant on 27.11.1998 did not meet him nor he knows that Manager had asked him about making of file and on saying 'yes' by the

complainant he had asked Rs. 2000.00 from him. This witness has denied that the Manager had called the appellant Ghanshyam Singh before him and said something. Proceeding of demonstration dated 26.11.1998 and copy of pre-trap memo have not been submitted in the court. He has also stated that he had not demanded any money and pre-trap memo and post-trap memo dated 27.11.1998 bears no signatures of the complainant. Statements of the witness relating to the proceedings took place on 26.11.1998, were not taken, as they were not ready to state anything regarding forged proceeding.

17. The appellant Ghanshyam Singh in his statement recorded under Section 313, Cr.P.C. has stated that the prosecution story is false. Neither somebody had met him nor he had asked anybody to give money to the Manager. He has also denied the fact that any money was given to him. He has stated that he is a Peon and gives water to the office-staff, does cleaning work etcetra. He does not know anything about loan. He was not given any money nor his hands were washed. He has been caught wrongly. He is innocent. He has denied to give any evidence in his defence.

18. In defence, Sri Hriday Ram has been examined by the accused persons as D.W.-1. He has stated in his statement on oath that he maintains a Saving Bank in Vishesharganj Branch of Basti Gramin Bank, which is running from the last 8-10 years. He deposits money in this account and at the time of need withdraws from it. This Account's Number is '1442'. He has further stated that on 27.11.1998 he had gone to withdraw money from his account, but money could not be withdrawn, because there was a hue and cry. There was an altercation between the appellant Avinash Kumar Yadav and one person. That person was asking Sri Yadav to pick the money lying on floor, which Sri Yadav was denying by saying why he should do so. This is not his money, but that person got that money picked by Sri Avinash Kumar/appellant, 2-3 persons came there and took that money from Sro Avinash/appellant and said that we are C.B.I. Personnel and ousted all the people from the Bank. On the second day when he went to the Bank, he came to know that the C.B.I. had taken away the appellant Sri Avinash Kumar by arresting him. This witness has further stated that he had withdrawn Rs. 4000.00. This witness has attested his Bank Pass Book, Ext. Kha-1.

19. The Trial Court after adducing the evidence and statement of witnesses came to the conclusion that the prosecution has been able to prove its case and consequently convicted both the appellants under Section 120-B, I.P.C. and Sections 7 & 13(2), read with Section 13(1)(d) of Prevention of Corruption Act,

1988 and sentenced each of them under Section 120-B, I.P.C. to undergo 1 year's rigorous imprisonment and under Section 7 of Prevention of Corruption Act to undergo two years' rigorous imprisonment with fine of Rs.300/-, and under Section 13(2), read with Section 13(1)(d) of Prevention of Corruption Act to undergo 1 years' Imprisonment with fine of Rs.200/-. All the sentences were directed to run concurrently, and the time spent in jail was directed to be adjusted in the sentence awarded. In default of payment of fine, the appellants were directed to further undergo one months' additional imprisonment.

20. Aggrieved by the verdict of the conviction, the appellants have preferred the aforesaid appeals.

21. Learned counsel for the appellant has submitted that the prosecution sanction granted by the alleged competent authority is without application of mind as is apparent from the oral testimony of Sanctioning Authority PW-1 himself. It has further been argued that genesis of lodging of complaint is under cloud as all the actions, which are required to be taken after registration of first information report, have been taken instantly in the present case, prior to even filing of the complaint by the complainant. The first information report is apparently ante time and registered in complete derogation of C.B.I. Crime Manual without verifying the alleged complaint.

22. Further, it has been contended on behalf of the accused-appellant that the alleged demand of illegal gratification is not proved, neither by oral nor by documentary evidence. The pre-trap and post trap memorandum have been prepared without following the prescribed procedure. It has also been submitted that the complainant Shri Surendra Kumar Singh is in the habit of implicating officials of the department in order to get his work done. The alleged recovery is also doubtful as the same has not been substantiated and corroborated by the independent witnesses. The testimony of independent witnesses is not trustworthy enough to establish the alleged recovery. The prosecution witnesses have given different version regarding procedure adopted for washing of hands after the alleged recovery, which also indicate towards the falsity of the alleged recovery. Moreover, there are lot of discrepancies and contradictions in the evidence of witnesses, which falsify the prosecution case.

23. *Per contra*, learned counsel for the C.B.I., contended that the prosecution has established the guilt of appellants in the commission of offence in this case. The FIR version has fully been supported by oral and documentary evidence, based on the said evidence, the court below rightly convicted the appellants

and the impugned judgment warrants no interference.

24. Considered the rival contentions and perused the impugned judgment and order of the trial court and material on record.

25. In the present case a trap was laid by the Trap Laying Officer for arrest of the appellants while accepting bribe of Rs.2,000/- from the complainant for release of agricultural-loan of Rs. 25000.00 in his favour. The pre-trap and post trap proceedings were conducted and finally the appellants were arrested after acceptance and recovery of the bribe money. The appellants were charged under Section 120-B, I.P.C. and Sections 7 and 13(2), read with 13(1)(d) of the Prevention of Corruption Act, which read as under:

"7. Public servant taking gratification other than legal remuneration in respect of an official act.--Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

(Explanations) --(a) "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration". The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "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.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

13. Criminal misconduct by a public servant.-- (1) A public servant is said to commit the offence of criminal misconduct,--

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(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

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

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation.--For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

26. In the case of **B. Jayaraj v. State of A.P.; (2014) 13 SCC 55** the Hon'ble Supreme Court has observed as under:

"It is a settled position in law that demand of illegal gratification is a sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. In so far as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Section 13(1)(d)(i)(ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand."

(ii) *P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and Anr.; (2015) 10 SCC 152"*

27. In the case of **N. Vijayakumar v. State of Tamil Nadu, 2021 (3), SCC 687**, another bench of three Hon'ble Judges dealt with

the issue of presumption under Section 20 and the degree of proof required to establish the offences punishable under Section 7 and clauses (i) and (ii) Section 13(1)(d) read with Section 13(2) of PC Act. In paragraph 26, the bench held thus:

"26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court."

(emphasis added)

28. Thus, the demand for gratification and its acceptance must be proved beyond a reasonable doubt.

29. It is relevant to mention that Section 7, as existed prior to 26th July 2018, was different from the present Section 7. The unamended Section 7 which is applicable in the present case, specifically refers to "any gratification". The substituted Section 7 does not use the word "gratification", but it uses a wider term "undue advantage". When the allegation is of demand of gratification and acceptance thereof by the accused, it must be as a motive or reward for doing or forbearing to do any official act. The fact that the demand and acceptance of gratification were for motive or reward as provided in Section 7 can be proved by invoking the presumption under Section 20 provided the basic allegations of the demand and acceptance are proved.

30. The allegation of demand of gratification and acceptance made by a public servant has to be established beyond a reasonable doubt. The decision of the Constitution Bench does not dilute this elementary requirement of proof beyond a reasonable doubt. The Constitution Bench was dealing with the issue of the modes by which the demand can be proved. The Constitution Bench has laid down that the proof need not be only by direct oral or documentary evidence, but it can be by way of other evidence including circumstantial evidence. When

reliance is placed on circumstantial evidence to prove the demand for gratification, the prosecution must establish each and every circumstance from which the prosecution wants the Court to draw a conclusion of guilt. The facts so established must be consistent with only one hypothesis that there was a demand made for gratification by the accused.

31. If the case in hand is examined in the light of the principles enunciated above, it comes out that the prosecution suffers from infirmities, as there are major contradictions and omissions in the prosecution evidence. There are no signatures of the complainant on pre-trial memo and post-trap memo, which was conducted on 27.05.1990. Moreover, the documents relating to demonstration and pre-trap memo, which took place on 26.11.1990 were also not produced before the Court. This created doubts upon the prosecution story, as alleged.

32. It is relevant to point out that both the appellants had come for survey to the house of the complainant and had told that everything is okay and had asked him to come to the Branch. However, this witness took a somersault before the court and stated that the day when survey was conducted, he was not present at his home. Here, it may be added that P.W.2 Surendra Kumar Singh in his cross-examination had deposed that whenever he met the Manager, he did not give any clear reply, whereas in Ext.Ka-3 his statement is that Sri Yadav (appellant) used to make pretext. Similarly, Manager used to make demand through Messenger Gyan Prakash (appellant), but neither the name of the Manager nor of Gyan Prakash is mentioned in the report, Ext. Ka-3. It appears from the record that the learned trial court has committed grave error in not considering the fact that there is vital discrepancy in the statement of the P.W. 4/R.S. Senger and P.W. Surendra Kumar Singh, as P.W. 2 has deposed that Superintendent of Police, has stated to give an application, which he had written in the office of R.S. Senger, whereas Sri Senger had deposed that complainant was not written in his presence. Thus, there are contradictions in the statement of prosecution witness, the benefit of which would go in favour of the appellants. Apart from this, there are major discrepancies in the statement of the complainant.

33. Thus, on the basis of analysis made herein above, this Court is of the view that the trial Court's finding on the point of holding guilty the accused-appellants for the offence under Sections 7 and 13(2), read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 is not in accordance with the evidence and law and the same is not sustainable, even though the case under Section 120B is also not made out against the appellants, consequently, this appeal filed by the

appellants is liable to be allowed.

34. For all the reasons stated above, the appellants are entitled to be given the benefit of doubt and accordingly, they are entitled to be acquitted of the charges.

35. In the result, the both the appeals are **allowed** and the judgment and order dated 31.03.2004 passed by learned Special Judge, Anti-Corruption (West), Lucknow, in Case No. 5 of 1999, State v. Avinash Kumar Yadav & anr., registered as R.C.No. 27(A)/1998, under Sections 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988, and Section 120B, I.P.C., whereby the Special Judge has convicted the accused-appellants namely, Avinash Kumar Yadav and Ghanshyam Singh, and sentenced both of them under Section 120-B, I.P.C. for 1 year's rigorous imprisonment and under section 7 of Prevention of Corruption Act, 1988 for two years rigorous imprisonment with fine of Rs.300/-, and under Section 13(2), read with Section 13(1)(d) of Prevention of Corruption Act, 1988 for one year's rigorous Imprisonment with fine of Rs.200/-, with default stipulations, is hereby set aside. For the reason aforesaid, the appellants Avinash Kumar Yadav and Ghanshyam Singh are acquitted of the charges levelled against them.

36. The appellant **Avinash Kumar Yadav** and **Ghanshyam Singh** are on bail. They need not to surrender. Their bail-bonds are cancelled and sureties stand discharged.

37. The Senior Registrar is directed to ensure compliance by forwarding a certified copy of this judgment to the Court concerned at the earliest.

38. The trial court record, if any, be returned back to the Court concerned.

39. Let a copy of this judgment be placed on the file of Criminal Appeal No. 982 of 2004, Ghanshyam Singh v. State of U.P.

(Shamim Ahmed, J.)

Order Date :- 13.2.2024

A.Nigam