

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.163 OF 2010

Selvaraj Johnson Rodrigo

52 years, residing at Building
No.D-3, Room No.2, Ground
Floor, P & T Colony,
Mulund (West),Mumbai-80

.. Appellant*Versus***1 C.B.I (ACB), Mumbai****2 The State of Maharashtra****.. Respondent**

Mr. R. G. Panchal, Advocate for the appellant.

Mr.H.S. Venegaonkar, for CBI.

Mrs.S.V. Gajare, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.**JUDGMENT RESERVED : 30th APRIL 2015****JUDGMENT PRONOUNCED : 28th JULY 2015**

ORAL JUDGMENT:-

1 This Appeal is directed against the judgment and order dated 22nd January 2010 passed by the Special Judge, Mumbai in Special case No.17 of 2003, convicting the appellant, who was the accused in the said case, of offences punishable under sections 7 and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short 'the P.C.Act').

2 By the said judgment and order, the learned Special Judge sentenced the appellant to suffer RI for 6(six) months and to pay a fine of Rs.2,500/- in default to suffer Rigorous Imprisonment for 1(one) month with respect to the offence punishable under section 7 of the P.C. Act and to suffer Rigorous Imprisonment for 1(one) year and to pay a fine of Rs.2,500/- in default to suffer RI for 1(one) year with respect to the offence punishable under section 13(2) read with section 13(1)(d) of the P.C. Act. The learned Judge directed that the substantive sentences would run concurrently.

3 The allegation against the appellant, as levelled in the police report under section 173 (2)(i) of the Code of Criminal Procedure is that the appellant, who was, at the material time, working as a Senior Accounts Officer (Telephone Revenue) at Byculla Telephone Exchange, Mahanagar Telephone Nigam Limited (MTNL), Mumbai, abused his official position by demanding and accepting an illegal gratification of Rs.500/- from Shri Shaikh Jamshed, as a reward for showing favour to the said Shaikh Jamshed by reducing the bank guarantee executed by the said Jamshed from Rs.35,000/- to Rs.25,000/-.

4 The prosecution case, as put forth before the trial court, may in brief be stated as under :-

Shaikh Jamshed, a resident of Byculla, at the material time, used to run one STD/PCO booth at Byculla in the name and style of 'Elite Business Center'. His STD booth was having two STD connections. Shaikh (hereinafter referred to as 'the complainant')

had furnished bank guarantee in the sum of Rs.35,000/- to the MTNL as security against the bills of the said STD/PCO booth, as per the requirement of the MTNL. The bank guarantee was initially submitted in the year 1997, and thereafter, it was renewed from time to time. That, the complainant came to know that subsequently the bank guarantees given by the other PCO owners, some of whom were having bills of a greater amount than of the complainant's STD/PCO booth, were reduced. That, the bank guarantee furnished by the complainant expired in the month of February 2002. He was then called by the appellant who, as aforesaid, was working as Senior Accounts Officer (Telephone Revenue) in MTNL at the material time, for renewal of bank guarantee. The complainant met the appellant and informed him that his business had been reduced, and that therefore, the bank guarantee be lowered. The appellant advised the complainant to give a bank guarantee for a period of six months only instead of three years and, accordingly, the bank guarantee was given for a period of six months. In the second week of September 2002, the complainant was again asked to renew the bank guarantee. The complainant, therefore, met the appellant in his office on 12th September 2002. When the complainant requested the appellant to reduce the amount of bank guarantee, the appellant expressed his inability to do so as per the rules. The complainant explained to the appellant that other PCO owners having higher bills than him had given a lesser bank guarantee than that required from him. The appellant then told the complainant that if the complainant would pay him Rs.1,000/- as a bribe, then he would lower the amount of bank guarantee to Rs.25,000/-. The appellant said that the bank guarantee amount would not be

reduced unless the complainant would give the appellant his share. When the complainant expressed his inability to pay the amount demanded by the appellant, the appellant reduced his demand asking the complainant to pay to him an amount of Rs.500/-. The appellant also told the complainant that this amount of Rs.500/- should be paid within 7 – 8 days, otherwise the bank guarantee amount would not be reduced.

The complainant was not willing to pay the amount of bribe and therefore, came to the office of the CBI, and lodged a complaint against the appellant. The Investigating Officer Rajesh Bishnoi (PW 8) then called two panchas – Kulkarni (PW 2) and Morje, and explained to them the details of the complaint. The complainant was asked to produce an amount of Rs.500/- which the complainant did by producing five currency notes of Rs.100/- denomination. Phenolphthalein powder was applied on each of the said notes after their numbers were noted down in a panchnama. Panch Kulkarni was to accompany the complainant and was instructed to hand over the notes when required by the complainant. After following usual procedure, a trap was laid, and the police party and the panchas went to the office of the appellant.

5 That, it was planned that complainant and panch both should go inside the cabin of the appellant, but the security guard outside the cabin, allowed only one person to go inside. As such, Kulkarni stayed outside and only the complainant went inside the cabin. The appellant asked the complainant as to why he had come there and also asked whether he had brought the amount. The complainant told him that he would come with the amount

after collecting the same from his friend who was outside. The complainant then came out, collected the marked money from Kulkarni, put it inside his shirt pocket and went inside the cabin of the appellant. The complainant handed over the marked money to the appellant who accepted it by his right hand, counted the same and then took it in his left hand. The appellant, then by pulling the drawer of his table by right hand, placed the amount in the drawer by his left hand. He then took out the papers with regard to the complainant's bank guarantee from the drawer, put the stamp and made an endorsement to the effect that the bank guarantee was reduced from Rs.35,000/- to Rs.25,000/-. The appellant then put his signature and date below his signature, and handed over the bank guarantee to the complainant. The complainant then came out, gave pre-determined signal to the raiding party after which Bishnoi and other members of the trap party went inside the cabin of the appellant. Hand-wash of the fingers of both the hands of the appellant was obtained. The amount was found in the drawer of the table in the cabin and it was taken charge of. The bank guarantee was also taken charge of by the Investigating Officer Bishnoi. The appellant was taken to the office of the CBI and placed under arrest.

Further investigation into the matter was carried out by PI Smt.Sharada Rao. The seized articles were sent to Central Forensic Science Laboratory, New Delhi. On completion of investigation,a charge-sheet came to be filed against the appellant.

6 In order to prove its case, the prosecution examined 11 witnesses during the trial. The first witness is the complainant

himself. The second witness Heramb Kulkarni is the panch who had accompanied the complainant at the time of the trap. The third witness Nagpati Venkatraman Bhat was the Chief Accounts Officer of Wadala Telephone Exchange at the material time. The fourth witness Sham Murjhani was, at the material time, working as an Executive Engineer in the MTNL. The fifth witness Shivpratap Singh was, at the material time, working as Commercial Officer, Byculla having his office at Wadala Telephone Exchange Building. The sixth witness Ashok Chaudhary is a photographer who had taken, on instructions of CBI Officers, photographs of the cabin in which the appellant used to sit. The seventh witness Shamim Ansari, was at the material time, working as a clerk in the Byculla Telephone Exchange. He used to look after bill amendments, recovery of arrears, refund of deposits, etc. He used to report to the appellant. The eighth witness Rajesh Bishnoi working as Inspector of Police, CBI at the material time is, as aforesaid, the Investigating Officer. The ninth witness is Dhirendra Vyas, an employee of the Bank of India. He was examined apparently for showing that his bank had issued bank guarantee in favour of MTNL at the instance of the complainant. The tenth witness Smt.Sharada Rao is the Investigating Officer, who had filed a charge-sheet in the matter. The eleventh witness N. Parathasarthy is the person who had granted sanction to prosecute the appellant, as contemplated under section 19 of the P.C. Act.

In addition to the oral evidence of these witnesses, a number of documents were tendered in evidence, marked and exhibited. These include the bank guarantee (Exhibit- 9).

7 I have heard Mr.R.G.Panchal, the learned counsel for the appellant. I have heard Mr.H.S. Venegavkar, learned counsel for the CBI. With their assistance, I have gone through the evidence – oral and documentary – adduced during the trial. I have also carefully gone through the impugned judgment.

8 Mr.Panchal, the learned counsel for the appellant contended that the order of conviction, as recorded by the learned Special Judge is not in accordance with law. He submitted that the initial demand of bribe allegedly made by the appellant on 12th September 2002 itself had not been proved. He contended that a trap was laid on the very day on which the complainant reported the matter to the CBI without verification of the demand allegedly made by the appellant on 12th September 2002. He also contended that no steps to record the conversation were taken, and in that manner also, the demand of gratification was not verified. He, therefore, submitted that this itself rendered the prosecution case, vulnerable. Mr.Panchal also contended that even the acceptance of the total amount by the appellant, was not satisfactorily proved. He submitted that the tainted amount was recovered not from the person of the appellant, but, allegedly, from the drawer of the table in the appellant's cabin. It is also submitted that the hand-wash of the appellant did not actually show that the solution had turned pink. It is also contended that the bank guarantee had already been taken by the complainant with him on 12th September 2002 itself, and that, therefore, it was not likely that the appellant would take out the bank guarantee, make an endorsement and put his signature and rubber stamp thereon, on 19th September 2002. It is also contended in this

context that it was nobody's case that the bank guarantee was carried by the complainant with him to the CBI office, or to the office of the appellant. It is contended that the complainant had been previously penalized for not paying the bills of the MTNL and that, he therefore, had a grudge against the appellant. Mr.Panchal submitted that it was, therefore, not safe to rely upon an uncorroborated testimony of the complainant so as to hold the appellant guilty of the alleged offences. Apart from these contentions, much emphasis was laid on the well recognized principle in the matter of appreciation of evidence that '*unless the evidence of the initial demand is satisfactory, the evidence obtained by laying a trap is required to be viewed cautiously*'.

9 The case rests on the evidence of the complainant, the panch witness Heramb Kulkarni (PW 2) and the evidence of PI Rajesh Bishnoi (PW 8) who had recorded the complaint made by the complainant and had arranged the trap on the appellant. In view of the contentions advanced, it would also be necessary to refer to and discuss the evidence of Shamim Ansari (PW 7). It is not necessary to refer to the other evidence and some of it was, perhaps, not necessary to be adduced at all, during the trial.

10 In his evidence, the complainant has stated the facts consistently with his case. According to him, he had pleaded with the appellant to reduce the bank guarantee for about 2 to 3 hours, but the appellant had told that he would reduce it only if an amount of Rs.1,000/- would be given to him. He has also stated that, later, the appellant reduced the amount of demand to Rs.500/-. The original complaint made by him was tendered in

evidence (Exhibit-8). He then speaks of laying a trap and going to the office of the appellant. Regarding the actual incident of demand and acceptance of bribe, the complainant stated that the appellant asked him whether he had come with the amount and that thereafter, the complainant went out, collected the marked currency notes from panch Kulkarni (PW 2) and went inside the cabin of the appellant. According to the complainant, the money was accepted by the appellant and kept it in the drawer of his table, and that, thereafter the appellant took out the papers of the bank guarantee, made an endorsement thereon, signed the same, and put the rubber stamp below the signature.

11 I have carefully gone through the cross-examination of the complainant, panch Heramb Kulkarni and the Investigating Officer PI Bishnoi. I do not find that the prosecution case has been shaken in any manner from the cross-examination of any of these witnesses. It appears that the complainant was recalled for further cross-examination at the fag end of the trial, and the prayer for such recall was rightly allowed by the learned Special Judge with a view to giving an opportunity to the appellant to cross-examine the complainant further.

12 It is true that in this case, a trap was laid without verifying, or even attempting to verify, the demand of illegal gratification. There was also no arrangement made for recording the conversation between the complainant and the appellant that was expected to take place. Indeed, this is a weakness in the case of the prosecution. There is no doubt that if the evidence in respect of the initial demand is not satisfactory, the evidence

obtained by laying a trap is required to be viewed with caution. Heavy reliance on this aspect is, therefore, placed by the learned counsel for the appellant. Interestingly, the learned counsel quoted heavy reliance on the following observations made by me in my judgment in Criminal Appeal No.1146/12 (decided on 3rd December 2014) to emphasize his point.

“It is well settled that the demand of gratification is the foundation of the 'trap cases'. It has been laid down in several pronouncements of the Apex Court that unless the evidence of the initial demand is satisfactory, the whole evidence obtained by laying a trap, is required to be viewed cautiously. The argument that it would not be necessary for the prosecution to prove 'demand', and it would be sufficient to establish that the accused had 'obtained' illegal gratification for proving the charge of an offence punishable under section 7 of the P.C.Act, has been often rejected by the Superior Courts and by the Apex Court. In State of Himachal Pradesh Vs. Tej Ram (1990) Cr.L.J. 995, it was observed that if such an argument is accepted, the result would be catastrophic and anyone may come forward to level an allegation of corruption or bribery against a public servant by just pushing money into his pocket, or throwing the same at his table. It was held that the word 'obtains' has been intentionally used by the

legislature, and has a definite meaning. Therefore, before anyone can be proceeded against on the allegations of having taken illegal gratification, it would be necessary to prove that it was as a result of 'demand' that the money was passed on. Passing of money is a consequence of the demand. Thus, where there is no satisfactory evidence with respect to the demand of gratification, the entire prosecution case would be seriously affected”.

The legal position summarized in the aforesaid observations is proper and my view in that regard is not changed.

13 The rule requiring the evidence adduced in trap cases to be viewed with caution when there is no corroboration to the evidence of the initial demand, is not a rule of law. It is a principle in the matter of appreciation of evidence. It is because lack of satisfactory evidence regarding the initial demand might, in some cases, make the theory of a public servant having been falsely implicated by just pushing money into his pocket or throwing the same at his table, plausible. Since an unscrupulous complainant can easily resort to such tactics, prudence requires that there should be satisfactory evidence of the initial demand which is an ingredient of the offence punishable under section 7 and also of the offence punishable under section 13(2) read with section 13(1)(d) of the P.C. Act. That, however, does not mean that from the fact of acceptance of money, or from other circumstances of the case, an inference of there having been a demand for illegal gratification can never be drawn. It is not, that unless the

evidence of the complainant about the initial demand is corroborated, it is not possible to hold an accused guilty of an offence punishable under section 7, and/or the offence punishable under section 13(2) read with section 13(1)(d) of the P.C.Act. Every case would have its own special features, and there may be circumstances which would justify placing reliance on the uncorroborated testimony of a complainant with respect to the initial demand. Such circumstances, when satisfactorily established may themselves constitute circumstantial evidence of the demand – and sometimes even of the acceptance of illegal gratification.

14 In the instant case, the evidence of the complainant does not appear to be suffering from any infirmity. It does appear that perhaps he had approached the CBI Officers before 19th September 2002, but obviously, no steps in respect of laying a trap were taken at that time. The basic case of the complainant is that he wanted the amount of bank guarantee to be reduced. That, the appellant was competent to reduce the same, is not in dispute. The complainant lodged a complaint in the office of the CBI on 19th September 2002, whereafter a trap was arranged, is also not in dispute. According to the complainant, after the bribe amount was paid, the appellant reduced the amount of bank guarantee by putting an endorsement thereon, and then handed it over to the complainant.

15 In the facts and circumstances, ascertaining whether the amount of the bank guarantee was indeed reduced on 19th September 2002, would be crucial.

16 I have carefully examined the original bank guarantee. It contains a rubber stamp to the effect '**only for renewal not to be discharged**'. Curiously, the bank guarantee shows the signatures of the appellant and his rubber stamp impressions at two places. Below the stamp impression, 'only for renewal not to be discharged', there is a signature which is in blue ink. There is no date below this signature. Thereafter, there is handwritten matter/endorsement, which reads as 'may be renewed to Rs.25,000/-', in black ink. The second signature of the appellant is at the end of this endorsement below which the appellant has put a date as '**19/9**'. This endorsement, signature and the date below it, is in black ink. Rubber stamp impressions – mentioning the name and designation of the appellant are found below both the signatures. That, the endorsement has been made by the appellant and that it is his writing and signature is not in dispute. No dispute in that regard was raised by the appellant at any stage and in any form.

17 Now, if the appellant indeed made the endorsement reducing the bank guarantee to Rs.25,000/- on 19th September 2002, then what could be the reason for his doing so unless it was pursuant to the gratification given to him by the complainant as per the complainant's version? The fact that the appellant made such an endorsement on 19th September 2002 itself lends corroboration to the entire story of the complainant. It lends credence and strong support to the complainant's version of the initial demand, and also of his version of the appellant having obtained illegal gratification from him for reducing the amount of bank guarantee. Any other proposition would be too absurd to be thought about, as shall be discussed and demonstrated later. The

possibility that the appellant obliged him by reducing the amount of bank guarantee without taking any money from him, but still, the complainant planted money on him and falsely implicated him, cannot be accepted for a moment. The work which was not being done was suddenly done on 19th September 2002; and according to the complainant, it was on payment of the bribe amount. The theory of the complainant, therefore, has to be accepted because of the fact that the appellant **did** actually **reduce** the amount of bank guarantee on 19th September 2002, **which the complainant had earlier reported that the appellant would not do without taking bribe.**

18 Though a number of contentions have been raised, in my opinion, this is an issue which clinches the matter. This solitary circumstance lends support to the case of the complainant.

19 Before discussing how, in the circumstances of the case, this issue determines the fate of this Appeal, the other contentions raised by the learned counsel for the appellant, which according to him, improbabilize the version of the complainant may be examined. These contentions have been taken in the written notes/synopsis of arguments submitted by the learned counsel for the appellant.

20 It is contended that the complainant had come to the office of the appellant in the month of February 2002 itself, and that, it was not the case of the complainant that, at that time, the appellant demanded any money from him. It is contended that if the appellant intended to indulge into bribery, then the appellant would have demanded the bribe in the month of February itself,

and would not have asked the complainant to produce the telephone bills of six months and would not have waited until 2002 to make a demand of the bribe. I find no substance in this contention. The theory of a demand for illegal gratification having been made cannot be disbelieved on the ground that such a demand was not made earlier.

21 It is contended that as per the complainant's version, the demand for illegal gratification was made for the first time on 12th September 2002, and that, this demand was made when no other person was around. From this, it is perhaps suggested that the initial demand was not supported by any evidence except that of the complainant. I am not impressed by this contention/suggestion. There is nothing unusual in a public servant making a demand for illegal gratification from the concerned person when there would be nobody around such person and the complainant.

22 It is also contended that according to the complainant, the panch witnesses were already present in the CBI office when the complainant was narrating PI Bishnoi (PW 8) as to what was his complaint. It is contended that, that the panchas should be sitting in the CBI office, was rather strange. I am not impressed by this contention. If the evidence of the complainant in that regard is read, it is not possible to draw an inference therefrom that he stated that the panchas were already present when his complaint was being narrated by him to PI Bishnoi. All that it says is that when the narration of his complaint was going on, the said two persons were present. This is consistent with the evidence of Bishnoi who says that after going through the written complaint

lodged by the complainant, Bishnoi had called two persons from Bombay Port Trust to act as panchas, and that on their arrival, they were introduced to the complainant as well as to the other CBI Officers. According to Bishnoi, the complainant was asked to narrate the allegations made in the complaint before the said two persons (panchas). Thus, to construe the evidence of the complainant as if he states that 'the panchas were already present in the CBI office before his complaint was received by Mr. Bishnoi and before any action thereon was taken', is not correct.

23 It is also contended that the complainant's evidence shows that he had not met the appellant on 12/9/2002 at all – the date on which the initial demand of bribe is supposed to have been made. This contention is based on a statement made by the complainant in his cross-examination that the appellant had called him on 12/9/2002 for renewal of bank guarantee and that, the complainant had met the appellant within a day or two thereafter. I am not impressed by this contention either, as, in the further part of his examination, the complainant has categorically denied the suggestion that he did not go to see the appellant on 12th September 2002. The error, if any, is in mentioning the date on which the complainant had been called for renewal of the bank guarantee, and not in mentioning the date on which the complainant had actually gone to the MTNL office. This is not at all material as it may be due to the fact that the complainant had had no special reason to have accurate recollection of the precise date on which he had received a call to visit MTNL office. There is sufficient evidence to show that the complainant had actually gone to the MTNL office and met the appellant on 12th September 2002.

24 It is next contended that the trap was laid without verification of the demand. That, this is so is not in dispute. However, what is contended on the basis of this is that no pre-trap panchnama had actually been prepared and that it was subsequently fabricated. It is contended that there was no necessity of instructing the panch witness to wait outside the cabin of the appellant instead of accompanying the complainant inside the cabin as per the version in the pre-trap panchnama (Exh.43). Since the case of the prosecution is that the complainant was instructed by Bishnoi (PW 8) that if any demand for bribe money would come from the appellant during his conversation with the complainant, the complainant should collect money from Kulkarni (PW 2), it is contended that, that it was only a 'fishing trap' and that this indicates that there had been no previous demand. It is also contended that, that Heramb Kulkarni (PW 2) was asked to wait outside the cabin, is suspicious, and that the pre-trap panchnama has been subsequently fabricated so as to bring it in conformity with the subsequent happenings - such as that the security guard allowed only the complainant to enter inside the cabin of the appellant. It is also contended that if there was nobody to hear the conversation between them, that Bishnoi (PW 8) would not try to have the conversation recorded, is suspicious. It is contended that since the conversation was not recorded, there has been no evidence of the demand of bribe. It is true that there is some suspicion about this aspect of the prosecution case, because if the panch Kulkarni (PW 2) was instructed by the Investigating Officer Bishnoi to wait outside the cabin of the appellant, and not to go inside along with the complainant, he

would not have made *an attempt to enter inside the cabin*. The evidence shows that the security guard did not allow the panch inside the cabin of the appellant and allowed only the complainant to go in. This is rather curious because there was no point in the panch attempting to enter in the cabin inspite of a direction having been given to him to wait outside. Kulkarni does not speak about the pre-trap panchnama, and it was not shown to him, during his evidence. *Thus, there is undoubtedly great substance in this contention advanced by the learned counsel for the appellant, but unfortunately for the appellant, even the serious doubt about the correctness and accuracy of the record of the pre-trial panchnama, does not prove to be fatal to the prosecution case, which stands proved independently and inspite of such infirmities.*

25 It is also contended that as per the version of the panch, the marked currency notes and that the 'pocket' was handed over to the complainant. Based on this, a contention is advanced that where the 'pocket' had gone was a mystery, and therefore, the prosecution case was suspicious. I have examined the evidence of the PW 2 in that regard. In his evidence, he did not say that the marked currency was kept in any envelope. It is a stray sentence of Kulkarni (PW 2) appearing in his cross-examination where there is a reference to handing over 'pocket of currency notes' to the complainant. There obviously is an error in this regard. The words used by the witness are 'pocket' and not 'packet'. In all probability, the phrase 'pocket of currency notes' was forming a part of the question put by the cross-examiner, and has apparently been reproduced in the answer that was given by Kulkarni (PW 2). Any way, even assuming that, that there is some inconsistency

about the version as to in what manner the marked currency had been kept, and in what manner, or what condition the currency was handed by Kulkarni (PW 2) to the complainant, still in the facts and circumstances of the case, the same is not very material.

26 There are other contentions which relate to the alleged unsatisfactory evidence with respect to the acceptance of the bribe amount by the appellant. It is emphasized that the tainted amount was recovered not from the person of the appellant, but allegedly from the drawer of the table in his cabin. I am unable to agree with this contention. In my opinion, there is satisfactory evidence of the acceptance of the tainted amount by the appellant. Apart from the evidence of the complainant who categorically states that the appellant accepted the tainted amount, there is other corroborative evidence. The complainant, panch Kulkarni(PW 2) and PI Bishnoi (PW 8), all, have said that the hand-wash of the right hand fingers as well as the left hand fingers of the appellant was obtained after asking the appellant to dip his fingers in the solution of Sodium Carbonate. According to them, the hand-wash of the right hand fingers turned pink and that of the left hand turned light pink. The report from the Central Forensic Science Laboratory shows that the hand-wash of the right hand as well as of the left hand gave positive test for phenolphthalein. The contention that the acceptance was not satisfactorily proved, based on an admission given by the panch witness that he could not give the colour of the solution that was produced before the Court during the trial as hand-wash of the left hand of the appellant, is of no consequence.

27 It is next contended that the evidence of Shamim Ansari (PW 7) shows that the bank guarantee had been taken away by the complainant on 12th September 2002 itself, and that, this falsifies the case of the complainant/prosecution that the bank guarantee was lying with the appellant on 19th September 2002. Diverse contentions are raised about there being no evidence of the complainant carrying the bank guarantee to the appellant on 19th September 2002. The evidence of Shamim Ansari (PW 7) shows that a register was maintained for showing the movements of the bank guarantee as the customers would take away the bank guarantee for renewal. This entry, however, used to be made by Shamim Ansari for his convenience and the register which he was maintaining was not a statutory register. Indeed, there is an entry in respect of the bank guarantee furnished by the complainant and in that entry, date '12th September 2002' has been mentioned, which appears to be the date on which the bank guarantee is supposed to have been handed over to the complainant for its renewal. From the evidence of Shamim Ansari, it indeed appears that a rubber stamp was put by him on the bank guarantee and after obtaining the signature of the appellant on the rubber stamp, the bank guarantee had been handed over by him to the complainant on 12th September 2002. However, the contention that since the complainant has not made any reference to his meeting Shamim Ansari on 12th September 2002, it creates a doubt about the credibility of the complainant, cannot be accepted. The fact that the appellant had signed the bank guarantee on 12th September 2002 after Shamim Ansari had put the rubber stamp thereon for renewal thereof, actually goes against the appellant, as shall be discussed later.

28 It may be observed that the contentions raised by the learned counsel for the appellant relate to the appreciation of evidence. The question is basically of judging the truth of the version of the complainant who says that the illegal gratification was demanded by the appellant, and it was paid to him by the complainant. These contentions are to be kept in mind while assessing the evidence of the complainant, but the complainant's evidence cannot be simply discarded by looking at some infirmities. The real question is what the undisputed or satisfactorily proved facts establish.

29 In the matter of appreciation of evidence, one of the safe and sure parameters is to start from the facts which are either undisputed or crystal clear and then examine the other facts and see whether they either support and refute the inference that can be drawn from the undisputed or clearly proved facts. In the instant case, the disputed issue is '*whether the appellant had made a demand for illegal gratification, and had obtained illegal gratification from the complainant for showing him a favour i.e. of reducing the amount of bank guarantee*'. However, the following factors are not at all in dispute.

- (a) The complainant went to the office of the CBI and made a complaint in writing to the effect that the appellant had made a demand of illegal gratification of Rs.500/- for reducing the amount of bank guarantee which the complainant was required to give to MTNL.

- (b) That, on receipt of the complaint, a trap was laid by the CBI Officers.
- (c) The appellant did reduce the bank guarantee to Rs.25,000/- as desired by the complainant on 19th September 2002.

30 The question is what is the explanation to the fact of the appellant having reduced the bank guarantee on 19th September 2002 ? This needs to be judged rationally and logically, by keeping all the possibilities in mind. We may consider a possibility that the appellant had never made any demand of any bribe to the complainant, and the complainant falsely reported the matter to the CBI alleging such demand by the appellant. Obviously, this would happen only in case the appellant had already refused to reduce the amount of bank guarantee. It is possible to explain the reporting of the matter to the CBI by suggesting that 'because the appellant was not ready to oblige him by reducing the amount of bank guarantee, the complainant had a grudge against the appellant and reported the matter to CBI, pursuant to which a trap was laid.' It may also be suggested that the tainted amount was falsely planted on the appellant. Such explanations of the facts proved can be attempted to be given, but these explanations cannot explain the fact that the appellant indeed reduced the amount of bank guarantee on 19/09/2002. That the appellant was not ready to reduce the amount of bank guarantee cannot be disputed at all. What can be disputed is only the possible reason for the work not being done. One possibility would be that reducing the amount of bank guarantee was not

proper or in accordance with rules and the appellant being a man of principles was not ready to do such improper act. The other possibility is that the appellant wanted illegal gratification from the complainant for showing a favour to him by reducing the bank guarantee (as alleged by the complainant). But the work of the complainant was done on 19th September 2002. According to the complainant, it was on payment of bribe. The theory of the complainant, therefore, has to be accepted, because there is no other explanation of the fact that the appellant did actually reduce the amount of bank guarantee on 19th September 2002. One cannot infer that by some co-incidence, the appellant, who was earlier not ready to reduce the amount of bank guarantee, by a change of heart, suddenly reduced it on 19th September 2002. Nor can one infer that the appellant was always ready to reduce the amount of the bank guarantee, but the complainant, still went to the CBI office and lodged the complaint that the appellant was demanding illegal gratification for reducing the amount of bank guarantee. Thus, looked at from any angle, and even on the basis that because of the outright rejection of the complainant's request to reduce the bank guarantee, the complainant decided to put the appellant in difficulty and lodged a false report, the fact that the amount of the bank guarantee was not expected to be reduced by the appellant, cannot be doubted at all. When therefore, the same was, in fact, reduced, not only it supports the theory of the complainant that it was after the payment of bribe by him that it was reduced, but makes any other theory absurd.

31 It may be recalled that there are two rubber stamp impressions and two signatures of the appellant on the bank

guarantee. One signature is in **blue ink** and the other below which date '19/09' has been put, is in **black ink**. The endorsement 'may be renewed to Rs.25,000/-' is also in black ink. The other endorsement 'only for renewal not to be discharged' is in the form of a rubber stamp impression. The signature of the appellant below it in **blue ink**, is undated.

32 One may refer to the evidence of Shamim Ansari (PW 7) in this context. According to him, he used to put the rubber stamp 'only for renewal not to be discharged' and thereafter, used to take signature of the Controlling Accounts Officer below the said endorsement. The bank guarantee would be given to the concerned customer thereafter. He had said that the complainant had taken away the bank guarantee for renewal from him on 12th September 2002. Obviously, therefore, the endorsement 'only for renewal not to be discharged' by using a rubber stamp was made on 12th September 2002. As per the procedure explained by Shamim Ansari, the appellant's undated signature below the endorsement 'only for renewal not to be discharged' on the bank guarantee must have been taken on 12th September 2002 itself.

33 It may be recalled that the complainant categorically says that he was pleading for the reduction of the amount of bank guarantee with the appellant. According to him, *when on 19th September 2002, he paid the money to the appellant, the appellant took out the bank guarantee from his drawer, made an endorsement thereon, put rubber stamp and signed it.* The signature of the appellant and the date put by him below his signature as '19/09' itself fully corroborates the version of the complainant.

34 Since there was no apparent reason to have reduced the amount of the bank guarantee to Rs.25,000/- when he had, earlier, refused to reduce it – whether because he wanted a bribe for doing so or whether because he was a principled man – the claim of the appellant that he did so only on obtaining an illegal gratification of Rs.500/-, has to be accepted.

35 A feeble attempt to get out of this difficult position was made before the trial court by suggesting that the appellant was forced to put the endorsement dated '19/09' on the bank guarantee by the Investigating Officer after the trap. However, no such suggestion was given in the cross-examination either to the complainant, or to the panch Kulkarni, or to the Investigating Officer Bishnoi (PW 8). During his examination under section 313 also, the appellant did not put forward any such case in spite of the incriminating circumstance in the nature of the endorsement having been brought to his notice. (Incidentally, it may be observed that in reply to the last question put to him during his examination under section 313, the appellant had replied '*Case is false. My written statement be considered*'. However, a perusal of the record shows that actually no written statement was filed by the appellant. It is not to suggest that the appellant was bound to file a written statement, but this has been mentioned only to keep the record straight.) Even before this Court, though a number of arguments were advanced, that the appellant was forced by PI Bishnoi (PW 8) to make the endorsement after the trap was not contended. Even after this aspect of the matter was specifically pointed out to the learned counsel for the appellant and even to

the appellant who was present in the Court, no explanation of this circumstance, could be advanced by them. Even otherwise, the possibility that the Investigating Officer Bishnoi (PW 8) forced the appellant to make such an endorsement after the trap, does not appeal to reason. *It is because it would not occur to him that making of such an endorsement would be a clinching circumstance establishing the guilt of the appellant.* He would be content with the usual formalities in a trap case viz. recovery of the tainted money, and the hand-wash of the appellant turning pink. Why the possibility of the Investigating Officer Bishoni having forced to appellant to make the said endorsement after the trap is to be forthwith rejected would be further clear, if reference to an argument advanced by the learned Counsel for the appellant in a different context, is made.

36 In a different context, i.e. in the context of the claim 'that the bank guarantee was not with the appellant at all on 19/09/2002', the learned counsel for the appellant had raised a contention that *if the prosecution case was true, presence of phenolphthalein powder could have been detected on the bank guarantee, and also the pen used by the appellant, and that the fact that the Investigating Officer did not collect this evidence indicated that traces of phenolphthalein powder could not have been detected on the bank guarantee and the pen of the appellant.* Such an argument is based on the theory that the appellant did not do anything to the bank guarantee on 19/9/2002 at all, and support to this was sought to be obtained from the evidence of Shamim Ansari (PW 7) who speaks of endorsement and signature of the appellant having been made on 12/09/2002. What is overlooked

in such an argument is that there are two endorsements on the bank guarantee, and that making of an endorsement on 12/09/2002 by the appellant does not negative the theory of the appellant having made one on 19/09/2002. Be that as it may, what is significant is that the argument regarding not subjecting the bank guarantee, pen etc., to examination for detecting the presence of phenolphthalein powder, is not consistent with the theory of the appellant being forced to make the endorsement after the trap. If Bishnoi had forced the appellant to make that endorsement after the trap, he would have (for emphasizing that such an endorsement was made) collected evidence showing that the pen used by the appellant, as also the bank guarantee showed traces of phenolphthalein powder. He would not have failed to collect such evidence which would have supported his fabricated evidence. The very fact that this evidence was not collected, itself indicates that the significance of this circumstance was not realized by the Investigating Officer, at that time and rules out the possibility his having 'planted' the circumstance.

37 A number of contentions have been raised regarding the unavailability of the bank guarantee with the appellant on 19th September 2002. However, these contentions cannot be accepted for the simple reason that the appellant has indeed made an endorsement on the bank guarantee on 19th September 2002. The evidence of Shamim Ansari (PW 7) cannot be used to show that the bank guarantee was *physically* with the complainant after 12th September 2002. It is because the entry in the register has not been signed by the complainant, and secondly, it was a matter within the MTNL office itself. Since the complainant was negotiating the matter with the appellant for reduction of the

amount of bank guarantee, the complainant was not likely to collect the same, and obviously, the bank guarantee had remained with the appellant – though with the consent of the complainant - even after 12th September 2002. On the contrary, the evidence of Shamim Ansari (PW 7) shows that the bank guarantee had already been signed by the appellant after making the rubber stamp endorsement 'only for renewal not to be discharged' on 12/9/2002 itself, and there was no occasion for making a second signature or make any further endorsement thereon on 12/9/2002 or any time before 19/09/2002.

38 It must be clearly understood that the contentions raised by the appellant relate to the correctness or accuracy of the record such as pre-trap panchnama, post trap panchnama, etc. The evidence in respect of the panchnama is to be used for corroborating the evidence of the complainant, the panch and the Investigating Officer. That the record made by the Investigating Officer is not an accurate one, could certainly cast a doubt on the truth of the version of the prosecution witnesses, but there may be circumstances when the truth of the version is independently established by other evidence and by other circumstances making the question of accuracy of the record, insignificant. It is not that if the record is not believed to be accurate, the accused is to be acquitted as a punishment to the prosecution, but the importance of the accuracy of record lies in the fact that such lack of accuracy would fail to support the facts alleged and would create a doubt about the truth of the prosecution version. It may also reflect on the sincerity of the investigating agency. However, it does not mean that when such shortcomings or lack of sincerity are noticed,

the acquittal of an accused should follow as if penalty is being imposed upon the prosecution for their lapses. The Court has to consider the effect of the shortcomings and see whether the same create a reasonable doubt about the guilt of the accused. It is a matter of appreciation of evidence. Appreciation of evidence cannot be reduced to any set formula. When the truth of the prosecution version cannot be doubted in spite of the shortcomings in the record, and in spite of the existence of some doubt about its accuracy, the question of the panchnama not being an accurate record, pales into insignificance.

39 I have gone through the judgment delivered by the learned Special Judge. I find that the learned Judge has properly appreciated the evidence adduced before him. His assessment of the evidence of the complainant as credible, is correct. On an independent re-appreciation thereof, this Court also comes to the conclusion that the complainant's evidence can be safely relied upon. The learned Special Judge also appreciated the circumstance of there being an endorsement in black ink put by the appellant on 19/9/2002 in a proper perspective.

40 It is true that there were certain weaknesses in the prosecution case. It is a fact that no attempt to verify the initial demand was made. It is a fact that no attempts to record the conversation between the appellant and the complainant were made. It is true that the same could have been done. It is also true that these weaknesses in the prosecution case, might have created serious doubt about the truth of the matter, but for the fact that – fortunately for the prosecution and unfortunately for the

appellant – the appellant, as soon as he received the money, made an endorsement reducing the amount of the bank guarantee, and further – unfortunately for him – used a different type of ink than previously used. To make things worse, the appellant even put a date below that endorsement. The contentions raised on behalf of the appellant might have created serious doubt about the truth of the prosecution, had the appellant not put the endorsement on the bank guarantee on 19/09/2002. This solitary circumstance lends full corroboration to the evidence of the complainant which, in itself, is consistent, without any infirmities and quite reliable.

41 The appreciation of evidence as done by the learned Special Judge and the conclusion arrived at by him, is proper and legal.

42 The learned Special Judge has already taken a lenient view of the matter as regards the sentence. I, therefore, see no reason to interfere in the matter.

43 Appeal is dismissed.

(ABHAY M. THIPSAY, J.)