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

Judgment reserved on: **24.03.2015**
% Judgment delivered on: **01.05.2015**

+ **Crl.A. 155/2008**

RAM KARAN PATHAK Petitioner
Through: Mr. Piyush Sharma, Advocates.
versus

STATE Respondent
Through: Mr. Rajat Katyal, APP.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J.

1. This appeal is directed against the judgment dated 30.01.2008 passed by the learned Special Judge in C.C. No. 28/2002, arising out of FIR No. 2/2001, convicting the Appellant for the offences under Section 7 and Section 13(1)(d) read with Section 13(2), Prevention of Corruption Act, 1988 (PC Act) and the order on sentence dated 31.08.2008, whereby-for the offence under Section 7, PC Act, the appellant/ accused was sentenced to undergo rigorous imprisonment (RI) for 3 years and to pay fine of Rs. 5,000/- and in default to undergo simple imprisonment (SI) for three months, and, for the offence under Section 13(2), PC Act, the appellant had further been sentenced to undergo RI for 3 years and to pay a fine of Rs. 5,000/-, and in default to undergo simple imprisonment (SI) for three months. Both the sentences were directed to run concurrently.

2. The case of the prosecution as noticed by the trial court is that the complainant V.K. Diwan constructed shops on government land in property no. 19/596 J.J. Colony Kalkaji, New Delhi, for which he received a notice from the Estate Officer (Slum) – VIII Slum & J.J. Department of MCD, Room No. H-15, Vikas Kutir ITO, and, he was required to appear before the Estate Officer on 19.12.2000. The complainant (PW-7) appeared before the Estate Officer on 19.12.2000. The Estate officer asked the complainant (PW-7) whether he wants to get evicted or wants to pay damages. He agreed to pay the damages. Thereafter the Estate Officer handed over the file to the accused/ appellant R.K. Pathak, who was working as a reader under him for further action. The appellant informed the complainant (PW-7) that it is within his hand to assess damages, depending upon the extent to which his 'sewa pani' is done. He stated that he will assess damages around 20-30 thousand, otherwise he will assess the same at around Rs. 1 lac. Thereupon, the appellant asked the complainant (PW-7) to come again, and when the complainant (PW-7) met the appellant, he demanded Rs. 50,000/-, and finally agreed to accept Rs. 30,000/-. On 29.12.2000, the appellant took Rs. 5,000/- as bribe from the complainant (PW-7) and also Rs. 500/- for peon Kamal and Jaswant. He further asked the complainant (PW-7) to pay the balance amount before 09.01.2001, as the matter was listed before the Estate Officer for 09.01.2001. The complainant (PW-7) informed the appellant that he cannot pay the amount in one go, to which the appellant asked him to pay atleast Rs. 10,000/- on 05.01.2001. The complainant (PW-7) told the appellant that on 05.01.2001, he would pay Rs. 5,000/- and the rest of the amount will be paid before 09.01.2001, to which the appellant agreed.

3. The complainant (PW-7) was against giving of bribe. Consequently, he went to Anti-Corruption Branch (ACB) and gave his written complaint (Ex. PW-7/A) to the raid officer (R.O.) Inspector Naginder Singh (PW-8) in the presence of the panch witness Arvind Kumar (PW-6). Thereafter, the complainant (PW-7) brought five GC notes of Rs. 100/- each and 9 GC notes of Rs. 500/- each, and handed over the same to the R.O. (PW-8). The R.O. (PW-8) recorded the serial numbers of those GC notes in his pre-raid report (Ex. PW-7/A-1). The R.O. (PW-8) gave a demonstration to the complainant (PW-7) and the panch witness (PW-6) by applying phenolphthalein powder on those GC notes and asking the panch witness (PW-6) to touch them with his hand. Thereafter, the hand wash was taken with sodium carbonate solution, which turned pink. The solution was thrown away. The treated GC notes were given to the complainant (PW-7), who kept the same in the left pocket of his coat. Thereafter, all of them washed their hands. Further, the R.O. (PW-8) instructed the panch witness (PW-6) to remain close to the complainant (PW-7) and to overhear the conversation, and after being satisfied that bribe had actually been given, the panch witness (PW-6) was asked to give a signal by hurling his hand over his head. The complainant (PW-7) was also instructed to remain close to the panch witness (PW-6), and to do the transaction in such a manner that he would be able to see the transaction and hear the conversation.

4. At about 12:15 p.m., the R.O. (PW-8), complainant (PW-7), panch witness (PW-6), Investigating Officer (I.O.) Inspector S.S. Sandhu (PW-9), SI Kuldeep Raj, HC Birju Singh (PW-3) along with the driver left ACB for the office of Slum and J.J. Department, MCD at ITO in a government

vehicle. The government vehicle was left at the gate of Vikas Kutir at ITO and the I.O. (PW-9) remained in that vehicle. The complainant (PW-7) and the panch witness (PW-6) went inside the office of Slum and J.J. Department, MCD on the ground floor and the R.O. (PW-8) along with members of the raiding party remained outside room no. H-15. After about ten minutes, the complainant (PW-7), panch witness (PW-6) and one person i.e. the appellant came outside that building and after crossing the road they went towards Tikona Park behind Vikas Sadan. The members of the raiding party followed them. At 1:45 p.m., the R.O. (PW-8) received the pre-determined signal from the panch witness (PW-6) and he along with the raiding team rushed to Tikona Park, where panch witness (PW-6) told the R.O. (PW-8) that the appellant had taken bribe of Rs. 5,000/- from the complainant (PW-7) with his right hand and thereafter, he had transferred those treated GC notes in his left hand and kept it in the left pocket of his pant. The R.O. (PW-8) challenged the appellant that he had taken the bribe of Rs. 5,000/- from the complainant (PW-7) and offered the appellant to search him, before the search of the appellant be taken, but the appellant refused. The appellant became perplexed. On instructions of R.O. (PW-8), the panch witness (PW-6) recovered the bribe money of Rs. 5,000/- from the left pocket pant of the appellant. On instruction of the R.O. (PW-8), the panch witness (PW-6) compared the serial numbers of those GC notes with the serial numbers mentioned in the pre-raid report (Ex. PW-7/A-1) and they were found to be the same. The recovered GC notes were taken into possession vide seizure memo (Ex. PW-7/C). The hand wash of both the hands of the appellant were taken separately in the colourless solution of sodium carbonate, which turned pink. The left pocket pant wash of the

appellant was also taken in the similar way, which also turned pink. The solution prepared was transferred separately in six empty, small clean bottles which were sealed with the seal of NS. The marked paper slips RHW-I & II, LHW-I & II and LPPW-I and II were pasted on those bottles after obtaining the signatures of the panch witness (PW-6) and complainant (PW-7). The R.O. (PW-8) also signed the marked paper slips. The pant of the appellant was converted into a pulanda, sealed with the seal of NS and was taken into possession vide memo (Ex. PW-7/D). The seal was handed over to the I.O. (PW-9) by the R.O. (PW-8). The R.O. (PW-8) had also drawn the post raid proceedings (Ex. PW-8/A). The R.O. (PW-8) prepared the rukka and called the I.O. (PW-9) to the spot and handed over the custody of the appellant, case property, recovered GC notes, exhibits of the case, seizure memos, and copy of raid report for investigation. Thereafter, the I.O. (PW-9) prepared the site plan (Ex. PW-7/E) at the instance of complainant (PW-7) and panch witness (PW-6). The I.O. (PW-9) recorded the statement of the complainant (PW-7) and panch witness (PW-6) and arrested the appellant vide personal memo (Ex. PW-7/F). The I.O. (PW-9), after completing the investigation, filed the chargesheet in the court.

5. After complying with the provisions of Section 207, Cr.P.C., charges were framed against the accused for offences punishable under Sections 7 and 13 of the PC Act.

6. The prosecution examined 9 witnesses to prove its case. They are as follows:

- PW-1 Tarseem Kumar, Estate Officer VIII in the J.J. & Slum Department of MCD, Delhi.
- PW-2 J.P. Govil, Director Administration in the Slum & J.J. Department, MCD, Delhi He proved the bio data (Ex. PW-2/A).
- PW-3 HC Birju Singh. He proved that he took exhibits LHW-I, LPPW-I, sample seal of NS, forwarding letter and copy of FIR from Malkhana Moharar PS Civil Lines through road certificate and deposited the same with FSL Malviya Nagar and returned the road certificate to Malkhana Moharar.
- PW-4 Sunil Sharma, Commissioner, Personnel, DDA (Sanctioning Authority). He proved the sanction order (Ex. PW-4/A) granted by him for prosecution of the accused.
- PW-5 Ct. Mahinder Singh.
- PW-6 Arvind Kumar (Panch Witness). The independent eye witness to the demand and acceptance of bribe by the accused.
- PW-7 Vijay Kumar Deewan (the Complainant).
- PW-8 Inspector Naginder Singh (the Raid officer).
- PW-9 Inspector S.S. Sandhu (the Investigating Officer).

7. Thereafter, the statement of the accused was recorded under section 313, Cr.P.C. The appellant admitted that at the relevant time, he was posted as Reader to the Estate Officer VIII in J.J. and Slum Department, MCD. He denied that he had demanded or received the bribe amount from the complainant. He stated that he was innocent and that the complainant (PW-

7) was in the habit of getting the government servants trapped falsely to extort money from them. The complainant (PW-7) had made complaint against number of government officers. Complainant (PW-7) was a professional cheater and forger. Complainant (PW-7) was involved in two cases of forgery and was lodged in Central Jail. He stated that since he did not oblige the complainant (PW-7), he got him falsely trapped. The accused chose not to lead defence evidence.

8. As aforesaid, the learned Special Judge convicted the appellant and sentenced him in the terms noted hereinabove.

9. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal is preferred.

10. Learned counsel for the appellant submits that the sanction for prosecution was not accorded by the competent authority under Section 19 (1) (c) of the PC Act. The appellant in answer to Q. 31 in his statement recorded under Section 313, Cr.P.C., stated that the person who granted the sanction was not competent to accord it. He stated that an officer below the rank of Vice Chairman is not competent to remove him from his services. Further, that the sanctioning authority has not applied its mind while granting sanction. He submits that it is clear from the deposition of J.P. Govil (PW-2) that the appointing and disciplinary authority of the appellant was the Vice Chairman, DDA. However, the sanction order (Ex. PW-4/A) for prosecution of the appellant was issued by Sunil Sharma (PW-4) who was Commissioner, Personnel, DDA, at that point of time. Thus, the sanction order is invalid.

11. Learned counsel for the appellant submits that there is discrepancy in the deposition of the panch witness (PW-6) and the complainant (PW-7) with regard to the demand for bribe by the appellant. The panch witness (PW-6), in his examination-in-chief, deposed that *“Thereafter accused uttered the word “aur”. Thereafter complainant took out one eatable item and gave to the accused and then accused uttered the word “aur”. Then complainant took out one piece of sweet (sic) and gave to the accused. Accused again said “aur”. Thereafter complainant took out treated GC notes and gave to the accused in his right hand.”* Further, the panch witness (PW-6), in his cross-examination, stated *“All the three times when the accused uttered the word “aur”, I could not understand what he was demanding from the accused. It is correct that no demand by saying money or notes was raised by the accused.”* However, the complainant (PW-7) stated that *“Accused asked me that “Lao paise do””* Learned counsel submits that the complainant (PW-7) in his examination-in-chief deposed that *“There, accused demanded the bribe money. I took out treated GC notes of Rs. 5,000/- from the pocket of my coat and handed over the same in the right hand of the accused. I told the accused that accused should count the GC notes. Accused transferred the same into his left hand and put the same in the left side pocket of his pant. I told the accused that the rest of the amount, I will give him soon.”* However, the panch witness (PW-6) did not state that the appellant expressly demanded the bribe amount from the complainant (PW-7). Further, the panch witness (PW-7) did not depose that the complainant (PW-7) asked the appellant to count the GC notes, or about the fact that the remaining amount will be paid soon. Learned counsel submits that there is a material contradiction between the statements of the

panch witness (PW-6) – who stated that no demand was made by the appellant by demanding money or notes, and the complainant (PW-7) – who deposed that the appellant expressly demanded the bribe money. Learned counsel submits that since the demand of bribe and conscious acceptance thereof has not been established, the essential ingredients of Sections 7 and 13 of the Act have not been established. In this regard, reliance is placed on ***B. Jayaraj vs. State of A. P.***, 2014 (4) SCALE 81 and ***M.R. Purushotham vs. State of Karnataka***, (2015) 3 SCC 247 wherein the Supreme Court held that demand of illegal gratification is a *sine qua non* for the establishment of the offence under Sections 7 and/or 13 of the P.C. Act.

12. Learned counsel submits that in respect of the proceedings of hand wash and pant pocket wash, the complainant (PW-7) deposed that they were conducted at the spot i.e. in the Tikona park. However, the panch witness (PW-6) stated that “*All the writing work was done in the Anti Corruption Branch. Hand wash and pant pocket wash of the accused were also taken in Anti Corruption Branch*”. Thus, there is contradiction between the deposition of the complainant (PW-7) and the panch witness (PW-6). Further, the appellant in response to Q. 21 – in his statement made under Section 313, Cr.P.C. answered that “*Nothing was done at the spot and the washes were planted*”. Therefore, a serious doubt exists – whether the hand wash and the pocket wash of the appellant were planted by the prosecution later on.

13. Learned counsel submits that it is evident from the deposition of Tarseem Kumar (PW-1), that only he had the power to levy damages and other charges in respect of unauthorized occupation/construction over the

government land. He further stated in his cross-examination that the appellant did not have any power to levy damages and charges. Thus, as the appellant did not have any power to levy damages, he was not in a position to demand gratification from the complainant (PW-7).

14. Another submission of the learned counsel for the appellant is that the complainant (PW-7) was in a habit of lodging false complaints against government officials at ACB. He submits that the complainant (PW-7) was a black-mailer. The appellant, in response to Q. 36 of the statement recorded under Section 313, Cr.P.C., stated that he was innocent, and that the complainant (PW-7) was in the habit of trapping government servants falsely to extort money, and since he did not oblige the complainant (PW-7), he was falsely trapped in this case.

15. Learned counsel submits that the panch witness (PW-6) in the present case has been deputed as a 'panch witness' 7-8 times earlier. In such a case, the witness cannot be said to be reliable and independent, being a stock witness of the prosecution.

16. Learned APP, Mr. Rajat Katyal, appearing for the State has supported the impugned judgment. He submits that the submission of the appellant that sanction was incompetent or illegal is fallacious, as Sunil Sharma (PW-4) in his statement stated that – he being the Commissioner Personnel, DDA, was competent to remove the accused from service, and he has duly proved the sanction order (Ex.PW-4/A). Therefore, the sanction order is in conformity with Section 19 of the PC Act.

17. Mr. Katyal submits that the complainant (PW-7) has stood by his complaint and established the demand and acceptance of bribe by the appellant. He submits that the evidence of the complainant (PW-7) is duly corroborated by the statement of the panch witness (PW-6). He submits that the appellant is misreading the deposition of the panch witness (PW-6). The panch witness (PW-6) gave the detailed description of how the appellant demanded bribe, and how the same was given by the complainant (PW-7) and accepted by the appellant. The complainant (PW-7) does not narrate elaborately about the entire proceedings. Rather, he straight away states that the bribe was demanded by the appellant, and the same was given to him by the complainant (PW-7).

18. In regard to the submission of the appellant that there was discrepancy in the statements of the complainant (PW-7), and the panch witness (PW-6), as to where the proceedings of hand wash and pant pocket wash were taken, he places reliance on *Syed Ahmed vs. State of Karnataka*, (2012) 8 SCC 527 to state that such minor discrepancy, which does not affect the substratum of the prosecution's case, or impact the core issues, is liable to be ignored. The same is the result of imperfect recollection by the witnesses of the events as they transpired several years before the depositions were made in Court.

19. Learned APP submits that the appellant came outside his room and went into the Tikona Park with the complainant (PW-7) and the panch witness (PW-6). Mr. Katyal submits that the appellant has not explained in his statement under Section 313, Cr.P.C., as to why he had gone to the

Tikona park with the complainant (PW-7) and the panch witness (PW-6) during office hours, leaving his seat.

20. Learned APP submits that after the appellant was apprehended, the hand washes Ex.P-2/1-4 and pocket wash of the pant Ex.P-2/5-6 of the appellant were taken, which turned pink and gave a positive test for the presence of phenolphthalein powder. This stands established by the FSL report (Ex. PW-9/D). Mr. Katyal submits that the appellant has also not offered any explanation as to why his hands and pocket washes gave positive results for the presence of Phenolphthalein powder and about the recovery of tainted notes from his pocket. In this regard, learned counsel places reliance on ***Phula Singh vs. State of H.P.***, (2014) 4 SCC 9.

21. Learned APP places reliance on ***Narendra Champaklal Trivedi vs. State of Gujarat***, (2012) 7 SCC 80, wherein the Supreme Court held that if there is conscious acceptance of bribe by the accused, it is obligatory on the Courts to raise a presumption under Section 20 of the PC Act. He further submits that the presumption under Section 20 of the PC Act has not been rebutted by the appellant in the present case.

22. Mr. Katyal submits that the judgments cited by the appellant, i.e. ***B. Jayaraj*** (supra) and ***M.R. Purushotham*** (supra) are not applicable in the facts of the present case, as, in both the cases, the complainant had turned hostile and disowned their respective complaints. However, in the present case, the complainant (PW-7) has stood by his complaint and his testimony stands corroborated by other credible independent evidence, viz. the statement of the panch witness (PW-6); the statement of the R.O. (PW-8);

the pre-raid proceedings (Ex.PW-7/B-1) and the post-raid proceedings (Ex.PW-8/A), and; the hand and pocket wash FSL test results of the appellant. Mr. Katyal submits that in this case, even the R.O. (PW-8) was a witness to the giving and taking of money. The R.O. (PW-8) has deposed that he was able to see the transaction. The R.O. (PW-8), in his examination-in-chief, stated that he had taken position outside the Tikona Park, from where the appellant, complainant (PW-7) and panch witness (PW-6) were visible. He had seen the complainant (PW-7) give something to the appellant before giving the GC notes. Lateron, the R.O. (PW-8) came to know that the complainant (PW-7) handed over eatables before giving the actual bribe money. This testimony of the R.O. is corroborated by the panch witness as well.

23. Learned APP submits that the appellant was dealing with the case of the complainant (PW-7) under the Public Premises (Eviction of Unauthorised Occupants) Act, and the file (Ex. PW-1/C) of the complainant (PW-7) was recovered from the almirah of the appellant which stands proved from the statement of Tarseem Kumar (PW-1). Hence, the motive of the appellant stands established, that he obtained gratification for assessment of lower damages against the complainant (PW-7) for unauthorized encroachment.

24. I have heard learned counsels, perused the record and considered the submissions and evidence led in the case.

25. The first submission of the appellant is that the sanction for prosecution was not accorded by the competent authority. As per the

appellant, the Vice Chairman, DDA was the appointing authority and no person below that rank had the authority or the competency to remove him from services.

26. The sanction was accorded by Sunil Sharma (PW-4), who was on the Commissioner, Personnel, DDA. He deposed in his examination-in-chief as follows:

“I being Commissioner, personnel, DDA being a competent authority to remove him from service accorded the sanction after carefully going through the material placed before me collected during the investigation of this case after applying my mind”

27. In his cross-examination, Sunil Sharma (PW-4), *inter alia*, stated:

“The powers to remove LDC from service was vested to Commissioner, Personnel in 1999.”

28. It is clear from the deposition of Sunil Sharma (PW-4) that in 1999, the power to remove LDC from service – which the appellant, at the relevant time was, was vested to the Commissioner, Personnel. The present case relates to an incident of the year 2000-01. Pertinently, the thrust of the appellants submission before the Trial Judge was premised on the fact that he had been appointed as LDC on 01.12.1984 by the Vice Chairman, DDA, and therefore, he could not be removed by the Commissioner, Personnel. This submission was rejected by the Special Judge by placing reliance on the decisions reported as **SBI Vs. S. Vijay Kumar**, AIR 1991 SC 79; and **A. Vekataswamy Vs. State (CBI)**, 1992 CrL.J. 3216. In these cases, the delinquent had been appointed by a higher authority, but subsequently dismissed/ punished by the lower authority on the strength of the amended

Rules & Regulations. The Courts upheld the action taken by the lower authority as competent. In view of the fact that the power to remove the appellant LDC from service was vested in the Commissioner, Personnel, Sunil Sharma (PW-4) in the year 1999, he was the authority competent to grant sanction under Section 19 of the PC Act on 29.01.2002. The appellant has not disputed or challenged the deposition of Sunil Sharma (PW-4) that under the Regulations of 1999, Sunil Sharma (PW-4) was the authority competent to dismiss the appellant from service.

29. During the course of his submissions, learned counsel for the appellant has tendered in Court a copy of the order dated 03.06.2008 passed by the Vice Chairman, DDA bearing Order No.242/BIG/08/DC5666, whereby the appellant was removed from service after conduct of an inquiry under Regulation 25 of the DDA Conduct, Discipline and Appeal Regulations, 1999. Learned counsel for the appellant thus submits that the order dated 03.06.2008 establishes the fact that it was the Vice Chairman, DDA, who was the competent authority to remove the appellant from service, and not the Commissioner (Personnel).

30. I do not find any merit in this submission for the reason that merely because the higher authority, namely, the Vice Chairman, DDA may have passed the order of removal from service qua the appellant, the said act does not impinge on the power of the Commissioner (Personnel) DDA to remove the appellant from service in terms of the aforesaid regulations of 1999. It is well settled that an authority, who may be higher than the disciplinary authority of a delinquent in the hierarchy, is empowered to take disciplinary action against the delinquent. In any event, that may be an argument

available to be raised by the appellant to assail the order of removal from service. The issue is not as to which authority actually removed the appellant from service. For purposes of Section 19 of the PC Act, the issue to be examined is as to which authority is competent to remove the accused from service. In view of the above discussion, there is no doubt that the Commissioner (Personnel) DDA was competent to remove the appellant from service when the sanction for prosecution was granted on 29.01.2002. Thus, the sanction accorded by Sunil Sharma (PW-4) for prosecution was a valid sanction. Though it is claimed by the appellant that the sanction was not granted by due application of mind, there is no merit in this plea, for the reason that apart from the *ipse dixit* of the appellant, there is nothing to show non application of mind by the sanctioning authority. Sunil Sharma (PW-4) has deposed that he granted sanction after carefully going through the material placed on record before him. Thus, it is held that the sanction was granted by due application of mind.

31. The establishment of the demand and acceptance of illegal gratification is a *sine qua non* for constituting the offences of which the appellant is charged. In regard to the aspect of the demand and acceptance of the bribe amount, the testimonies of the complainant (PW-7) as well as the panch witness (PW-6) are required to be considered, and appreciated in the light of the corroborative evidence.

32. The complainant (PW-7) exhibited his complaint (Ex. PW-7/A). Even the panch witness (PW-6) has deposed that the complainant (PW-7) came to ACB and he gave his written statement Ex PW-7/A to the RO (PW-8) in his presence. The complaint bears the signatures of the complainant as

well as the RO. In this complaint, which is in hindi, the complainant, *inter alia*, states to the following effect:

I V.K. Diwan S/o Sh. S.D. Diwan R/o19/596 J.J. Colony Kalkaji, New Delhi & I do the work of electricity repairing & maintenance. Since 1 year, I have constructed 2 shops in the front and back of my house which is on the government land, in which my wife does the work of sewing and knitting. In one of the shops, I do my electricity work. I have another place of work at A-14/2, Mukherji Nagar. I received a notice from Estate Office slum & J.J. Dept. Of MCD, Room No. H-15, Vikas Kuteer, ITO in which I was asked to appear on 19.12.2000 at the Estate Office. I appeared on 19.12.2000 and the Estate Officer asked me if I was ready to be evicted or pay the damage charges. I replied that I am ready to pay. After the hearing, the file was handed over to the clerk R.K. Pathak for further action. Afterwards, R.K. Pathak informed me that it is within his hands to assess damages. He stated that depending on the 'sewa pani' that is done, he will assess damages of Rs. 20 to 30 thousand otherwise if I don't co-operate with him, he will assess damages of Rs. 1 lac or more. He asked me to come again. On meeting him, he demanded Rs. 50,000/- but finally agreed to accept Rs. 30,000/-. On 29.12.2000, R.K. Pathak accepted Rs. 5,000/- and Rs. 500/- for the peons Kamal and Jaswantand further asked me to give the remaining Rs. 25,000/- together on or before 9.1.2001. I informed him that I cannot give the remaining amount in one go, to which he asked me to pay atleast Rs. 10,000/- on 5.1.2001 during lunch time positively. I asked R.K. Pathak if I can give Rs. 5,000/- by 5.1.2001by afternoon and I will pay the remaining before 9.1.2001, to which he agreed. R.K. Pathak told me to come to him only and not say anything infront of any other officer. I agreed to give R.K. Pathak the bribe money, as I was helpless. R.K. Pathak demanded illegal gratification and so action be taken against him. I have got Rs. 5,000/- to give to him.

33. The pre-raid proceedings (Ex.PW-7/B1), *inter alia*, record the fact that the complainant (PW-7) produced five GC notes of Rs.100/- each and nine GC notes of Rs.500/- each, whose serial numbers were noted and the notes were treated with phenolphthalein powder. The demonstration of the hand wash was given to the complainant (PW-7) and the panch witness (PW-6), and both were proved with regard to the procedure to be adopted during the raid.

34. In relation to the raid itself, the complainant (PW-7), in his examination-in-chief, in respect of demand and acceptance of gratification by the appellant, has stated as follows:

“Thereafter I along with the panch witness and member of raiding party reached near Gate of Vikas Kuteer. I along with panch witness went inside room no.15 but at that time accused Ram Karan Pathak was not available at his seat. We waited for some time there and after sometime, accused Ram Karan Pathak came there. Accused took me and the panch witness to a Tikona Park after crossing the Ganda Nala. There, accused demanded the bribe money. I took out treated GC notes of Rs.5000/- from the pocket of my coat and handed over the same in the right hand of the accused. I told the accused that accused should count the GC notes. Accused transferred the same into his left hand and put the same in the left side pocket of his pant. I told the accused that the rest of the amount, I will give him soon. In the meantime panch witness gave the pre-determined signal to the raiding party by hurling his hand over his head”.

(Emphasis Supplied)

35. In his cross examination, the complainant (PW-7), *inter alia*, stated:

“Accused asked me that “Lao paise do”. Thereafter I took out the treated GC notes and gave to the accused in his right hand. We remained in the park for about 5-10 minutes”.

36. In relation to the raid proceedings, the panch witness (PW-6) stated as follows:

“I along with the complainant went in the room of accused Ram Karan Pathak, who is present in court (correctly identified)”.

*“... .. accused was not there and his room was empty. After sometime, accused came there in his room **and took the complainant and myself outside his room through gallery and we went in a Tikona Park.**”*

*“Accused asked the complainant that the next date of his case is 09.01.2001 and he had sent more notices. **Thereafter accused uttered the word “aur”. Thereafter complainant took out one eatable item and gave to the accused and then accused uttered the word “aur”. Then complainant took out one piece of sweet (sic) and gave to the accused. Accused again said “aur”. Thereafter complainant took out treated GC notes and gave to the accused in his right hand. Accused then shifted those GC notes in his left hand and kept the same in the left side pocket of his pant.***

“In the meantime, I gave the pre-determined signal to the members of the raiding party who came there immediately”.

(Emphasis Supplied)

37. During his cross examination, the panch witness (PW-6), *inter alia*, stated as follows:

*“The talks mentioned in my examination in chief had also taken place while way to Tikona park. No conversation took place to Tikona Park. **All the three times when the accused uttered the word “aur”, I could not understand what he was demanding from the accused. It is correct that no demand by saying***

*money or notes was raised by the accused. I was three yards away from the accused and the complainant when the conversation took place. **Raid Officer was at a distance of about 15 yds away from us and he was visible to us.** The raid officer reached the spot within seconds after my signal with one more official and thereafter other members came there except driver and one police officer”.*

(Emphasis Supplied)

38. The R.O. (PW-8), in his examination-in-chief, *inter alia*, deposed:

*“After about ten minutes, **complainant, panch witness and accused Ram Karan**, whose name was revealed later on, came outside that building and after crossing the nala, they went towards Vikas Sadan and we followed them and they **reached Tikona Park, behind Vikas Sadan.** **Complainant and panch witness had some talk with accused there”.***

(Emphasis Supplied)

39. During his cross examination, the R.O. (PW-8), *inter alia*, stated as follows:

*“I came to know that accused was not present when the complainant and the panch witness went inside the room of the accused and he came after 5-10 minutes. The conversation between accused and complainant was not audible to me nor they were visible to me. **When they came outside the room, I was watching them from a side.** The complainant, panch witness and the accused had covered a distance more than 100 yards while reaching tikona park. I also followed them. There was no bench in the tikona park which is surrounded by trees on its boundaries. It was a very small park. **The accused, complainant and panch witness were visible to me from the place where I had taken my position outside the tikona park. I had seen the complainant while giving something to the accused before giving the GC notes.** Later on I came to know that it was eatable thing i.e. mathi and sweet. Voln. I had*

inquired from the complainant about it later on and he had told me that accused did not ask the bribe directly and was asking the complainant to give something and so, the complainant had given the mathi and sweet and then accused had stated “AUR WHO” and then complainant had given the bribe money. This fact is not mentioned in the post-raid report as what panch witness had told me at the spot is mentioned in the post-raid report. It is correct that this fact is not mentioned even in the statement of panch witness”.

(Emphasis Supplied)

40. I do not find any merit in the submission of the appellant that there is material discrepancy, or contradiction in the depositions of the complainant (PW-7) and the panch witness (PW-6). A statement of a witness has to be understood in the context in which it is made. The same incident – which is witnessed by two or more witnesses, may be perceived differently by both/each of them. Thus, different eye-witnesses to the same incident, may narrate the incident in the manner that each of them perceives it. It is not necessary that the versions of both are identical, and merely because they are not identical, the two versions cannot be rejected as being contradictory, inconsistent and, therefore unreliable. What is necessary to be seen is whether the substratum, or the crux of the different versions is the same, or not. If it is, the same may be accepted by the Court. The complainant (PW-7) in his examination-in-chief did not elaborate on the details of the conversation that he had with the accused - dialogue by dialogue. He simply states that the accused demanded the bribe money. The statement that the accused demanded the bribe money is the conclusion drawn by the complainant (PW-7) in the context of his previous interaction with the accused, as narrated in the complaint. In his cross-examination, the

complainant (PW-7) stated that the accused asked him “*lao paise do*”, whereafter he took out the treated G.C. notes and gave the same to the accused. Thus, the crux or substratum of the statement of the complainant is that the accused demanded the bribe money and that he gave the same to the accused thereafter.

41. On the other hand, the panch witness (PW-6) has given a graphic description of the manner in which the conversation between the complainant (PW-7) and the accused proceeded, and the demand for bribe was made, and the bribe money given to the accused. From the testimony of the panch witness (PW-6), it is clear that, repeatedly, the complainant (PW-7) gave eatables to the accused. On each occasion, the accused accepted the same. However, the accused was not satisfied with what was offered and given by the complainant (PW-7), and demanded something more without specifying as to what he was demanding, in explicit terms. However, when the treated G.C. notes were given to the accused in his right hand, he transferred the same to his left hand and placed the same in the left side pocket of his pant. Thereafter, he did not demand anything else from the complainant (PW-7). Thus, the panch witness (PW-6) also establishes the conscious demand for “something more” i.e. ‘Aur’, from the complainant (PW-7); the giving of the treated GC notes by the complainant; the conscious acceptance of the said notes by the accused; the keeping of the said GC notes by the accused in his left pant pocket, and; the ceasing of the demand for something more by stating “Aur”, upon the giving and acceptance of the treated GC notes to the accused.

42. At this stage, I may observe that to indulge in corruption and demand a bribe is not only a criminal act, but it also has a moral stigma attached to it. It is a taboo, about which people who indulge in such conduct, would not openly talk. There is shame and a feeling of guilt attached to it. A person who demands bribe or illegal gratification, is likely not to make an express and brazen demand for money repeatedly, having earlier conveyed his demand to the person from whom he expects illegal gratification. Even when he/she wishes to make the demand again, or to remind the person of his earlier demand, he/she is more likely to convey his/ her subsequent demand/reminder, without using explicit words to convey the same, and to convey the demand in a convoluted manner. This is natural human conduct and trait.

43. Therefore, when the accused was offered eatables by the complainant (PW-7), on repeated occasions, he conveyed his demand for illegal gratification by using the words “*Aur*”. Since the accused had already made an express demand on an earlier occasion, the use of the words “*Aur*” by the accused on repeated occasions, conveyed his demand for bribe to the complainant (PW-7), who understood “*Aur*” as a demand for bribe, in the context. Thus, the complainant (PW-7), perceived the same as “*lao paise do*”, and stated so in his deposition recorded after nearly 7 years of the trap incident. Interestingly, the R.O. (PW-8) deposed that the complainant (PW-7) had, after the raid, informed him that the accused used the words “*Aur Woh*”, which is another way of conveying the same thing i.e. the demand for bribe, in the context of the present case. A demand for illegal gratification need not be made or articulated in express terms, and it could be made by

gesticulation, or use of cryptic words/ vocabulary which, in the context, would be understood by the complainant. Thus, mere omissions on the part of the accused to use the words “money”, after saying “*Aur*” on repeated occasions, when he was offered eatables, does not mean that he did not make a demand for illegal gratification. The said demand was in respect of bribe, and this is evident from the fact that he accepted the money with his right hand; transferred the same to his left hand; placed the same in his pant left pocket, and; did not utter the word “*Aur*” thereafter, meaning thereby that he was satisfied with what was given to him by the complainant (PW-7). The panch witness (PW-6) did not understand as to what the accused was demanding from the complainant (PW-7) when he utter the word “*Aur*” on earlier occasions, for the reason that he was not privy to the earlier demand made by the accused, i.e. before the complaint was made, and was not aware of the said context.

44. It is well-settled that minor embellishments or discrepancies naturally creep in, when statements of witnesses are recorded after several years of the incident. In the present case, the trap was laid and raid conducted on 05.01.2001. However, the statement of the panch witness (PW-6) was recorded on 12.03.2007 and 17.07.2007. The statement of the complainant (PW-7) was recorded on 12.03.2007 and 15.05.2007. Thus, there was a gap of nearly 6 ½ years between the date of the incident, and the recording of the statements, and a natural loss of memory, and imperfection in recollection is bound to result with passage of such a long time. This also explains the discrepancy in the statements of the panch witness (PW-6) and complainant (PW-7) with regard to the place at which the hands/pocket wash was

conducted and the post-raid proceedings (Ex. PW-8/A) drawn up, which are minor in nature, and do not shake the core case of the prosecution. Reference may be made to *Syed Ahmed* (supra). These submissions of the appellant are, therefore, rejected.

45. Pertinently, the appellant neither explained his conduct of taking the complainant (PW-7) and the panch witness (PW-6) to the Tikona Park, while he was on duty, nor the positive Phenolphthalein test result and the recovery of the treated GC notes from him. These aspects were within the special knowledge of the accused, and it was for him to explain these incriminating circumstances, which he has failed to do.

46. In the present case, the R.O. (PW-8) also witnessed the moving of money from the hands of the complainant (PW-7) to that of the accused, since he was not very far away from the complainant (PW-7), the accused and the panch witness (PW-6) at the time of the raid, and was in visible distance. The pre-raid proceedings (Ex. PW-7/B1), the post-raid proceedings (Ex. PW-8/A), the hands and pocket wash of the accused and the positive test report by FSL, and the statement of PW-8 completely corroborate the testimonies of both the panch witness (PW-6) and complainant (PW-7).

47. The submission of the appellant that he had no authority to determine the quantum of charges that could be levied upon the complainant (PW-7) for unauthorized occupation and, therefore, he was not in a position to demand illegal gratification from the complainant (PW-7) has no merit. Pertinently, the file of the complainant (PW-7) was recovered from the possession of the accused. Secondly, “*motive or reward for doing*” has been

explained in Section 7 of the PC Act to mean a person who receives a gratification as 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. Therefore, it is wholly immaterial whether, or not, the appellant was in a position to make an assessment of the damages that the complainant (PW-7) would have to pay for his unauthorized occupation of the Government property.

48. The submission of learned counsel for the appellant that the complainant (PW-7) is in a habit of lodging false complaints against Government officials in the ACB, or that he is a blackmailer, or that he is involved in cases of forgery, for which he was also lodged in Jail, have been considered, but found to be meritless. A complainant is interested in the success of the trap. Therefore, the complainant's testimony has to be examined with caution. This would be more so where his credibility is sought to be impeached on the basis of his past conduct, namely his involvement in other cases of forgery, etc.

49. Merely because a complainant may have got several Government officials trapped in cases of corruption is no ground to doubt his credibility, for the reason, that a principled and public spirited person may show zero tolerance to acts of corruption by Government officials, and may make it a point to steadfastly make complaints in all such cases which he encounters.

50. In the present case, the testimony of the complainant appears to be credible, since it is corroborated by the other primary and corroborative evidence brought on record. The prosecution has been able to establish the

demand and acceptance of bribe by the appellant not only through the complainant (PW-7), but also through the independent eye-witness/ panch witness (PW-6), who had no axe to grind against the appellant, and who himself is a Government official. The demand and acceptance of illegal gratification by the appellant also stands corroborated by unimpeachable evidence, namely the pre-raid proceedings (Ex. PW-7/B1); the post-raid proceedings (Ex PW-8/A); the testimony of the R.O. (PW-8) (who too had no reason to falsely implicate the appellant), and the hands & pocket wash test reports by the CFL. Therefore, for the sake of argument, even if one were to discount the testimony of the complainant (PW-7) (though it cannot be said that merely because he may be involved in other cases of forgery etc, he would not be believed in any case of criminality reported by him), there is, even otherwise, sufficient independent primary as well as corroborative evidence which establishes the demand and acceptance of bribe by the appellant.

51. There is also no merit in the appellant's submission that the panch witness (PW-6) was a stock witness of the prosecution, because he had acted as a panch witness in 7-8 earlier cases. It is well-known that the general public does not easily come forward to join the raid proceedings as independent witness. Government officers, who enjoy security of tenure are, therefore, put on duty from time to time, to act as panch witnesses. Pertinently, it is not the appellant's case that the credibility of the panch witness (PW-6) had been doubted earlier in any other proceedings in cases where he acted as a panch witness. The panch witness (PW-6) had no previous acquaintance, or animosity with the appellant, and being a

Government servant enjoying security of tenure and service, would be under no compulsion to depose in favour of the prosecution. A perusal of the testimony of the panch witness (PW-6) shows that the same is completely natural. In fact, the so-called minor discrepancies pointed out by the appellant are also indicative of the fact that the panch witness (PW-6) acted completely independently, and was not a tutored, or a stock witness.

52. A similar argument was raised by the appellant in ***Raj Kumar vs. State***, Crl. Appeal No. 831/2008, decided on 26.03.2015 by this Court, which was also referred in ***Mahipal Singh vs. State***, Crl. Appeal No. 341/2008. The said submission was rejected in ***Raj Kumar*** (supra) by observing as follows:

“The submission of Mr. Krishnan that Gurander Singh (PW-7) was a stock witness, since he admitted to be on duty in the ACB on the fateful day, i.e. 27.12.2000, and because he was present in the ACB even prior to the complainant (PW-6) arriving in the ACB, also has no merit. Merely because PW-7 had acted as a shadow/ panch witness in one other case, it does not make him a stock witness. Unless PW-7 acted as a shadow/ panch witness in numerous trap cases, and it were shown to the Court by leading evidence that in some other case he stood discredited and his testimony was not believed by the Court, in my view, the testimony of PW-7 could not be rejected by branding him as a stock witness. It is well-known that the general public does not like to get involved, as a witness in such like trap cases. Therefore, Government officers who enjoy security of service and status are assigned the duty to act as independent shadow/ panch witnesses. They are under no compulsion to depose in favour of the prosecution, and are free to depose according to their conscious with regard to the facts witnessed by them. Pertinently, PW-7 failed to identify the appellant/ accused in the present case. Had he been a stock witness, he would not have failed to identify the appellant/

accused in Court. This itself shows that PW-7 deposed truthfully and naturally without being concerned with the outcome of his testimony. PW-7 was not shown to have any animosity towards the appellant. In his cross-examination, no suggestion to this effect was given to PW-7. The appellant also did not lead any evidence in this regard.... ..”.

53. The decisions relied upon by the appellant in the case of **B. Jayaraj** (supra) and **M.R. Purushotham** (supra) have no application in the facts of the present case, since the demand and acceptance of illegal gratification by the appellant stands established beyond all reasonable doubts. Consequently, the Court is bound to draw a presumption under Section 20 of the PC Act, namely, the appellant accepted the gratification as a motive, or reward for showing favour to the complainant (PW-7) in the matter of assessment of damages to be paid by him for encroachment of public land assessable under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The appellant has not been able to rebut the said presumption by leading any cogent evidence. Even in his statement made under Section 313 Cr.P.C., the appellant has not offered any explanation for his receiving the money and placing the same in his pocket and for its recovery from his pant pocket. He has not explained as to why he had taken the complainant (PW-7) and the panch witness (PW-6) to the Tikona Park by leaving his office.

54. In view of the aforesaid discussion, I find no merit in this appeal and dismiss the same. The appellant is directed to surrender forthwith to undergo the remaining sentence.

VIPIN SANGHI, J

MAY 01, 2015