

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

Judgment reserved on: 28.01.2015

% Judgment delivered on: 15.04.2015

+ Crl.A. 276/2009

RAJPAL THROUGH LRs Appellant
Through: Mr. Arun Birbal, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Mr. Lovkesh Sawhney, Advocate.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

VIPIN SANGHI, J.

1. This appeal is directed against the judgment dated 23.03.2009, in CC No. 85/2001, arising out of F.I.R. No. 13/2000, passed by Shri A.S. Yadav, learned Special Judge, Delhi, convicting the Appellant for the offences under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ('PC Act'), and the order on sentence dated 24.03.2009 whereby – for the offence under Section 7, PC Act, he was sentenced to undergo Rigorous Imprisonment ('RI') for a period of one year and to pay a fine of Rs. 3000/- and in default of payment of fine, to undergo Simple Imprisonment ('SI') for three months, and, for the offence under Section 13(1)(d) read with Section 13(2) PC Act, the Appellant had been sentenced to undergo RI for a period of one year and to pay a fine of Rs.

3000/-, and in default of payment of fine, to undergo SI for three months. Both the sentences were directed to run concurrently.

2. At the outset, I may note that during the course of the appeal, the appellant died on 10.01.2012. The appeal has been pursued by the daughter of the deceased appellant.

3. The case of the prosecution is that on 01.02.2000, complainant Nasir Khan (PW-4) submitted an application in the office of SDM, Seelampur for obtaining an Other Backward Class (OBC) certificate. On 01.03.2000, the complainant (PW-4) went to the office of the SDM, Seelampur and met the deceased appellant/accused Rajpal, who was dealing with OBC certificates in Room No. 7. The Appellant informed the complainant (PW-4) that his file was missing. Thereupon, the complainant (PW-4) told the appellant that he urgently required his OBC certificate for the purpose of Civil Services Examination. The Appellant took the complainant (PW-4) to Room No. 4, where no one was present, and demanded bribe of Rs. 200/- from the complainant (PW-4) and asked him to come with the bribe amount on 02.03.2000 at 1:30 PM and collect his OBC certificate. The complainant (PW-4) was against giving of bribe. Consequently, he went to Anti-Corruption Branch (ACB) and got his complaint (PW-4/A) recorded in the presence of panch witness Harbir Singh (PW-6). The complainant (PW-4) took with him Rs.200/- i.e. 2 GC notes in the denomination of Rs.100/-. The raid officer (R.O.) Ms. Sudesh Kumari, ACP Vigilance (PW-7) recorded the serial numbers of those GC notes in the pre-raid proceedings (Ex. PW-4/B). Thereafter, the R.O. (PW-7) gave a demonstration by applying phenolphthalein powder on those GC notes and asking the panch witness

(PW-6) to touch them with his right hand, and taking the hand wash, which turned pink. The solution so prepared was thrown away. The GC notes were handed over to the complainant (PW-4), who kept the same in the left pocket of his shirt. The raid officer (PW-7) instructed the panch witness (PW-6) to remain with the complainant (PW-4) and to hear the conversation between the complainant (PW-4) and the accused, and also watch the money transaction, and after being satisfied that the bribe has been demanded and given he was instructed to give a signal by hurling his right hand over his head. The complainant (PW-4) was further instructed to do the transaction in the presence of the shadow witness (PW-6). All the members of raiding party washed their hands.

4. The raiding party left ACB at about 1:00 P.M. in a government vehicle and reached the office of the SDM, Seelampur. The government vehicle was left in a gali at some distance away from the office of the SDM, and Inspector S.S. Sandhu (PW-9) – the Investigating Officer (I.O.) and Inspector Gopi Chand remained in the government vehicle. Panch witness (PW-6) and the complainant (PW-4) were sent inside the SDM Office, and the raid officer (PW-7) along with members of raiding team followed them and took their position outside room no. 7.

5. At about 1:30 P.M., the complainant (PW-4) and panch witness (PW-6) came out from room no. 7 along with one person and went towards the temple near the SDM Office. Thereafter, the R.O. (PW-7) received the pre-determined signal at about 1:35 P.M. and R.O. (PW-7) along with the raiding team rushed to the spot and challenged the appellant. The panch witness (PW-6) briefed the R.O. (PW-7) about the transaction, who offered

the appellant his search; however, he refused and became perplexed. On the directions of the R.O. (PW-7), the panch witness (PW-6) recovered those GC notes from the left pocket of the appellant. The numbers of the GC notes were tallied with those recorded in pre-raid proceedings (Ex. PW-4/B), which were found to be the same. Those GC notes were taken into possession by the R.O. vide memo (Ex. PW-3/B). Thereafter, the left hand wash and wash of the inner side left pocket of the appellant was taken in the solution of sodium carbonate, which turned pink. The solution of hand wash was transferred into two bottles (LHW-I & LHW-II), and of wash of the inner side left pocket of the appellant was also transferred into two bottles (PLPW-I & PLPW-II). Both the solutions of hand wash and pocket wash were sealed with the seal of GC.

6. Inspector S.S. Sandhu (PW-9), I.O. was called at the spot and the R.O. (PW-7) handed him the custody of the appellant along with exhibits, GC notes, sample seal, etc. The I.O. (PW-9) prepared the site plan (PW-9/A) at the instance of the complainant (PW-4) and panch witness (PW-6), and arrested the appellant vide memo (Ex. PW-3/C). I.O. (PW-9) also seized documents (Ex. PW-4/1 to Ex. PW-4/9) from the Appellant vide memo (Ex. PW-4/D). Thereafter, Inspector Gopi Chand was sent along with the panch witness (PW-6) to conduct the house search of the appellant. Subsequently, the appellant was taken to PS, Civil Lines and put in the lock up. The case property and one part of the exhibits were deposited by the I.O. (PW-9) with MHCM Police station, Civil Lines. The other parts of the exhibits were deposited with ACP R.K. Joshi (PW-1). During the course of investigation, the I.O. (PW-9) sent the part of the exhibits deposited with the ACP R.K.

Joshi (PW-1) to FSL Malviya Nagar through constable Birju (PW-2) and received the FSL report (PW-9/D). Further, he sent request letter (Ex. PW-5/X) to Deputy Commissioner, North East District, for obtaining sanction under Section 19 of the Prevention of Corruption Act, 1988. Sanction for prosecution (Ex. PW-5/A) of the appellant was received through covering letter (Ex. PW-5/B) and after completion of investigation, the chargesheet was filed in the court.

7. Charges were framed against the accused for offences punishable under Section 7 and 13 of the PC Act. The accused pleaded 'not guilty' and claimed for trial.

8. Nine witnesses were examined by the prosecution in order to prove its case. They were: PW-1 Shri R.K. Joshi, (ACP, CAW, South); PW-2 HC Birju Singh; PW-3 Constable Mahinder; PW-4 Nasir Khan (Complainant); PW-5 G.G. Saxena, (Sanctioning Authority); PW-6 Harbir Singh (Panch Witness); PW-7 Sudesh Kumari, (R.O.); PW-8 Mohd. Ahsan (SDM, Seelampur); PW-9 Inspector S.S. Sandhu, (I.O.). The statement of the appellant was recorded under Section 313, Cr.P.C. He claimed to be innocent and falsely implicated in this case. Appellant examined DW-1 Jai Lal Bhatti (Ballif, Court of SDM Seelampur) in support of his defence.

9. The learned trial Court on an analysis of the evidence came to the conclusion that the case against the Appellant had been proved by the prosecution beyond reasonable doubt and, thus, convicted the appellant.

10. Learned counsel for the appellant firstly submits that no valid sanction under Section 19(1)(c) of the PC Act was obtained from the competent

authority, before cognizance was taken by the Court in the present case, even though the appellant was a public servant. Learned counsel referred to the deposition of Insp S.S. Sandhu, I.O. (PW-9). Counsel submits that G.G.Saxena (PW-5), who had purported to grant sanction for the appellant's prosecution, was not the authority competent to accord sanction, as the appellant's appointing authority was the 'Secretary Services', and no person holding a lower rank/post than 'Secretary Services' had the competence to remove the appellant from service. In this regard, Mr. Birbal referred to the document mark 'Y', which was the bio-data of the appellant, received along with the letter dated 08.06.2000 of the SDM (HQ) addressed to the ACP, ACB. The bio-data mark 'Y' mentions the appointing authority of the appellant as the 'Secretary Services', while the disciplinary authority was mentioned as the Deputy Commissioner (North East). He submits that the document mark 'Y' had, infact, been proved in the testimony of the I.O. (PW-9). The I.O. (PW-9) had, *inter alia*, stated, "*During the course of investigation, I received bio-data of accused mark 'Y' through letter dated 08.06.2000.*" Learned counsel places reliance on ***State Inspector of Police vs. Surya Sankaram Karri*** (2006) 7 SCC 172 and ***State of Goa Vs. Babu Thomas*** (2005) 8 SCC 130 to submit that failure to obtain sanction from the competent authority is a jurisdictional error which invalidates the cognizance taken by the Court.

11. Learned counsel for the appellant submits that the appellants work was pertaining to issuance of SC and ST certificates and he was not dealing with the work of issuance of OBC certificates. He submits that the appellant in his statement made under Section 313, Cr.P.C denied that when the

complainant (PW-4) asked for his OBC certificate, he informed the complainant (PW-4) that his file had been lost. Further, the appellant in his statement under Section 313, Cr.P.C, *inter-alia*, states that '*The complainant inquired from me about the OBC certificate. I told him that I only issue the SC and ST certificate as I have not received any written order from SDM nor the charge has been handed over to me regarding the issuance of OBC certificate. On that complainant was annoyed and got a false report lodged at Anti Corruption Branch and got me falsely implicated.*'. He submits that the appellant was not in a position to demand gratification other than legal remuneration from the complainant.

12. Mr. Birbal submits that the investigation was continued by the R.O., Sudesh Kumari (PW-7), even after recording of the FIR, and S.S. Sandhu (PW-9) was shown as the I.O., only for the record. He submits that it is evident from the Malkhana Register (Ex. PW-3/D) that it was the R.O. Sudesh Kumari (PW-7) who deposited the recovered exhibits in the malkhana, instead of the I.O. S.S. Sandhu (PW-9). Mr. Birbal submits that the non-involvement of the I.O. (PW-9) in the investigation is evident from the fact that though he claims to have accompanied the raiding team and waited in the vehicle while the raid was being conducted, in his cross-examination, I.O. (PW-9) did not remember the kind of vehicle i.e. whether it was a car, van or any other kind of vehicle, in which they travelled from the ACB to SDM Office, Seelampur. This puts in doubt the role allegedly played by the I.O. (PW-9) in the investigation of the case. Further, the panch witness (PW-6) stated that his statement was recorded by the R.O.

(PW-7), and not the I.O. (PW-9). The panch witness (PW-6) in his deposition, *inter-alia*, stated as follows:

“My statement was recorded on the day of the Raid Officer at Anti Corruption Branch after 6.00 p.m.”

13. Learned counsel submits that the samples of the hand wash and pocket wash of the pant (LHW-I and PLPW-I) were retained in the ACB and were not deposited in the malkhana on 02.03.2000, while the samples LHW-II and PLPW-II were deposited in the malkhana on 02.03.2000. He submits that the seal of G.C. used in the case continued to remain with the R.O. (PW-7) as it was handed back by the panch witness (PW-6) to the R.O. (PW-7). The panch witness (PW-6) deposed that *‘The seal after use was handed over to me. I had returned back the seal to Raid Officer on the same day in Anti Corruption Branch in the evening.’* The R.O. (PW-7) deposed that *‘The seal was of Insp. Gopi Chand. I had taken the same while leaving for the raid from him... Seal after use was handed over to panch witness. I do not remember when the seal was returned by the panch witness to the investigating Officer. I do not remember whether seal was returned to me or not. I cannot say if the seal was returned after one week.’* Further, the I.O. (PW-9) corroborated the statement of the panch witness (PW-6) and stated that *‘The seal was not returned to me by the panch witness’*. In view of the fact that the seal was retained by the R.O. (PW-7), there was a possibility of tampering with the samples sent for testing. Therefore, the FSL results (Ex.PW-9/D) cannot be relied upon against the appellant, as there were chances of tampering the hand/pocket wash. He submits that, consequently, the FSL report cannot be relied upon, as there is grave possibility of the

samples having been tampered with. In this regard, he places reliance on *Surender Singh vs. State (NCT of Delhi)*, 2014 (4) JCC 2766.

14. Learned counsel submits that there is a material contradiction in relation to the place where the pant (Ex. P-7) was seized. The panch witness (PW-6) deposed that “*The pant of the accused was taken of at his house and there his pant was taken into possession.*”. However, the post-raid proceedings (Ex.PW-4/C) recorded that the pant (Ex.P-7) was also seized at the time of the raid itself along with the other exhibits. Thus, it renders the case of the prosecution unreliable.

15. Learned counsel for the appellant submits that the panchnama/seizure memo (Ex. PW-4/D) purports to be his confession of his guilt. The submission of learned counsel is that said seizure memo has to be ignored, as it was recorded by the police officer. Such a confession is not admissible as evidence, being prohibited under Section 25-26 of the Evidence Act, 1872. He places reliance on *Narayana Rao vs. State of Andhra Pradesh*, AIR 1957 SC 737, wherein the panchnama prepared by the police, which was signed by the panchas as well as the accused, was considered to be a confession – as it recorded the admission of all the accused to the commission of the crime.

16. On the other hand, Mr. Lovkesh Sawhney, learned APP, appearing for the State has supported the impugned judgment. On the aspect of sanction, he submits that G.G. Saxena (PW-5) was the Deputy Commissioner, North East District and was the competent authority to remove the appellant and therefore, under Section 19(1)(c) of the PC Act, he was the competent

authority to grant sanction for prosecution of the appellant vide (Ex.PW-5/A). He further submits that the satisfaction for grant of sanction is subjective, and was accorded by G.G. Saxena (PW-5) only after applying his mind and going through the FIR, statements, exhibits, etc. The application of mind by G.G. Saxena (PW-5) is evident from the fact that he had also made changes in the draft sanction letter. He submits that the question of a valid sanction touches upon the jurisdiction of the Court to proceed with the case and the same ought to have been raised at the very beginning. He further submits that the appellant did not contend before the learned Trial Court that the sanction was not given by the competent authority, or that G.G. Saxena (PW-5) was not the competent authority. Rather, the issue raised was that the sanction for prosecution was granted mechanically by the competent authority. He submits that the appellant could have raised the issue of competence of G.G. Saxena (PW-5) to grant sanction when he was summoned; when charge was framed, and; when G.G. Saxena (PW-5) was cross-examined. No question was put to G.G. Saxena (PW-5) to suggest that he was not competent to remove the appellant from service. He submits that this issue cannot be raised at this stage in appeal. He places reliance on ***CBI Vs. V.K.Sehgal*** (1999) 8 SCC 501. Mr. Sawhney submits that Section 19(1) is a matter of procedure, and does not go to the root of jurisdiction. Section 19(3) and 19(4) of the PC Act, 1988 provide a complete answer to this objection. There has been no failure of justice, which is a pre-requisite for this submission to be made and considered. In this regard, he places reliance on ***Paul Verghese Vs. State of Kerala*** (2007) 14 SCC 783.

17. In response to the appellant's submission that the R.O. (PW-7) continued to be associated with the investigation even after the FIR was recorded, learned counsel for respondent submits that the exhibits were seized by the R.O. (PW-7), who after registration of the FIR handed over the investigation, along with the exhibits, memo, etc. to the I.O. (PW-9). Thereafter, the I.O. (PW-9) deposited LHW-I and PLPW-I (samples for sending to the FSL) with Shri R.K. Joshi (PW-1), as there was no malkhana in the ACB. The remaining exhibits were deposited by him in the malkhana of PS, Civil Lines, and not the R.O. (PW-7). Learned APP submits that Constable Mahinder (PW-3) had deposed that it was the I.O. (PW-9) who had deposited the exhibits in the malkhana on the day of the incident itself. By mistake, the name of the R.O. (PW-7) had been mentioned in the malkhana register, as her name was appearing in the seizure memo. Further, Shri R.K. Joshi (PW-1) deposed that he had kept LHW-I and PLPW-I in his safe custody in his official almirah under his lock and key, and handed over the same to the I.O. (PW-9) and HC Birju Singh (PW-2), who had carried the samples to FSL. The FSL report (Ex. PW-9/D) states that the samples were received from HC Birju Singh (PW-2) and that the seals were intact. After the test was conducted, the samples were re-sealed with the seals of the FSL. Mr. Sawhney submits that, thus, the prosecution has proved the entire chain of link evidence and it rules out any possibility of tampering. In this regard, he also places reliance on *Customs vs. Konan Jean*, (2012) 186 DLT 379. He further submits that even if the seals had been given to the R.O. (PW-7) by the panch witness (PW-6), it was of no consequences and would not be fatal to the prosecution, as investigation, along with the exhibits, was transferred prior to that to the I.O. (PW-9). He places reliance

on *State of U.P. vs. Zakaullah*, (1998) 1 SCC 557, wherein it was held that no benefit will accrue to the accused on the ground that there is no FSL report, if there is complete link evidence available. He further submits that assuming that even after the raid, the raid officer (PW-7) was involved in the deposit of the exhibits in the malkhana after handing over the charge to the I.O. (PW-9), merely on this ground the appellant cannot be acquitted. In this regard, he places reliance on *Dayal Singh vs. State of Uttaranchal*, (2012) 8 SCC 263 and *Karan Singh vs. State of Haryana*, (2013) 12 SCC 529. He further submits that the reliance of the appellant on *Surender Singh* (supra) is misplaced, in view of distinguishable facts in the present case.

18. The learned APP submits that the appellant was dealing with the work of issuance of OBC certificates. He submits that this is evident from the letter dated 27.02.2001 of the concerned SDM that the appellant was also handling the work of issuing OBC certificate which was also supported by the work order dated 29.06.1999. Learned APP submits that Mohd. Ahsan (PW-8) deposed that the appellant was dealing with the work of OBC certificates in addition to his own work. He stated that the appellant was dealing with issuance of OBC certificates from 20.02.2000. Further, learned APP, in the alternative, submits that it is wholly immaterial whether the public servant was in a position to do the work, or not.

19. The submission of Mr. Sawhney on the aspect that panchnama amounts to a confession, and, therefore, it not being admissible in evidence against the accused, is that the statement recorded in the panchnama is not a statement of the accused. He states that panchnama is a narration of events which happened in the past, in the presence of pancha, which he has seen

and heard. However, confession is an admission made in the statement of the accused. He submits that panchnama is not hit by Section 162, Cr.P.C. and is admissible under Section 157, Evidence Act, 1872 as held in ***Valibhai Omarji vs. The State***, AIR 1963 Guj 145. He further submits that the signatures of the appellant are below the endorsement 'produced by' and thus, are limited to production of file and not to the correctness of the contents of the panchnama. He submits that the 2nd part of the memo is a surplusage. Thus, in view of the above, at the most it can be considered as an irregularity.

20. Mr. Sawhney submits that the complainant (PW-4), and panch witness (PW-6) have deposed that there was demand, acceptance as well as recovery from the appellant. Their testimonies are consistent, reliable and fully corroborated by the R.O. (PW-7). The demand and acceptance of the bribe money has been proved by leading primary evidence. He submits that once demand and acceptance of bribe money has been established, a legal presumption arises under Section 20 of the PC Act that the appellant accepted the gratification as motive or reward for the work sought to be done, i.e. for issuance of the OBC Certificate to the complainant (PW-4).

21. He further submits that there was evidence to corroborate the statements of the complainant (PW-4) as well as the panch witness (PW-6). He submits that the serial numbers of the two GC notes of Rs. 100/- denomination which were recovered, tallied with the serial nos. which were noted in the pre-raid proceedings (Ex. PW-4/B). He further submits that the FSL report (Ex. PW-9/D) gave positive test for the presence of phenolphthalein powder and sodium carbonate in the hand wash and pocket

wash of the appellants pant. Moreover, he submits that in view of the testimony of Jai Lal Bhatti (DW-1), it is proved that the appellant went out of the room with the complainant (PW-4). It has not been explained by the appellant, as to why he had done so.

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

23. Section 19(1)(c) of the PC Act reads as follows:

“19. Previous sanction necessary for prosecution

(1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union

(b) in the case of a person who is employed in connection with the affairs of a State

(c) in the case of any other person, of the authority competent to remove him from his office.”

(Emphasis Supplied)

Grant of proper sanction by a competent authority is a *sine qua non* for taking cognizance of the offence. (See ***State of Karnataka through CBI v. Nagarajaswamy***, 2005 CriLJ 4534). Under Section 19(1)(c) of PC Act, the competent authority to accord sanction ‘*in the case of any other person*’ i.e. a person who is not employed in connection with the affairs of the Union, or the State, is the authority competent to remove him from office. In

the present case, the appellant has argued that 'Secretary Services' was the authority competent to grant sanction. However, it is apparent from the Bio-data Mark 'Y', that 'Secretary Services' is the appointing authority, and not the Disciplinary authority. G.G. Saxena (PW-5) has stated in his examination-in-chief that *'In July, 2001, I was posted as Deputy Commissioner North East District North West District.... .. Being competent authority to remove the accused from his service, I had accorded sanction u/s19 of Prevention of Corruption Act, 1988 to prosecute the accused in this case vide order Ex. PW5/A bearing my signature at point A, the sanction order was sent to DCP Anti Corruption Branch vide covering letter Ex. PW5/B which bear the signature of Sh. Satnam Singh, then SDM Head Quarter, North East at Point A. I identify his signature as he had worked under me'*. (emphasis supplied) Pertinently, the above statement made by G.G. Saxena (PW-5) that he was the competent authority to grant sanction under Section 19 of the PC Act was not challenged by the appellant during the cross-examination of G.G. Saxena (PW-5). No suggestion was given to this witness that he was not the competent authority to remove the appellant from service, or to consider the grant of sanction for prosecution. The appellant had argued in the trial court that the sanction was accorded for prosecution mechanically. It was never the stand of the appellant – at any stage, that the sanction was not accorded by the competent authority. Therefore, it is clear that G.G. Saxena (PW-5) was the competent authority to accord sanction for prosecution.

24. The present case is distinguishable on the facts from *Surya Sankaram Karri* (supra), in which the authority was claimed to have been delegated

with the power to accord sanction for prosecution. However, no such purported delegation was produced and led in evidence before the Court. He had admitted that under the rules, he was not the competent authority to remove the accused from service. In ***Babu Thomas*** (supra) the sanction for prosecution was granted by the Company Secretary, who was not the authority competent to remove the accused from service. Subsequently, a fresh sanction order was issued by the Chairman and Managing Director (CMD) of the Company, retrospectively, who too was not the authority competent to remove the accused from service. The authority competent to remove the accused from service was the Board of Directors (BoD) of the Company. Though the CMD claimed to have acted under the authority of the BoD, no resolution/decision taken by the BoD was referred to or led in evidence. The Supreme Court held that the Court had taken cognizance on the basis of a laconic sanction by an incompetent authority. It was in these circumstances that the Supreme Court upheld the decision of the High Court.

25. Further, the irregularity in granting sanction would be of significance if there was failure of justice as a consequence of it. In this regard, reliance may be placed on a three Judge Bench decision of the Supreme Court in ***Paul Varghese*** (supra), wherein the Court observed:

“8. ...The effect of sub-sections (3) and (4) of Section 19 of the Act is of considerable significance as noted in Parkash Singh Badal and Anr. v. State of Punjab and Ors., 2007 (1) SCC 1. In Sub-Section (3) the stress is on “failure of justice” and that too “in the opinion of the Court”. In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the “failure of justice” is relatable to error, omission or

irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (sic not) considered fatal unless it has resulted in failure of justice or (sic failure of justice) has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to root of jurisdiction. Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the 'Old Act') corresponding to Section 19(2) of the Act, question relates to doubt about authority to grant sanction and not whether sanction is necessary.”

(Emphasis Supplied)

In the present case, the appellant has failed to show that there was failure of justice due to grant of sanction by G.G. Saxena (PW-5).

26. The appellant could have raised the issue of competence of the sanctioning authority at the time: (i) when he was summoned, (ii) when charge was framed (iii) when PW-5 was cross-examined. However, no such objection was raised by him at the trial stage, and it is only being raised by him for the first time in appeal, which is not permissible. In this regard, reliance may be placed on **V.K. Sehgal** (supra), in which the Supreme Court, *inter alia*, observed:

*“10. ... For determining whether want of valid sanction had in fact occasioned failure of justice the aforesaid Sub-section (2) enjoins on the Court a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if he had raised any such objection at the early stage it is hardly sufficient to conclude that there was failure of justice. It has to be determined on the facts of each case. **But an accused who did not raise it at the trial stage cannot possibly sustain such a plea made for the first time in the appellate Court.** In *Kalpna Rai v. State through CBI*, 1998CriLJ369, this Court has observed in paragraph 29 thus:*

“29. Sub-section (2) of Section 465 of the Code is not a carte blanche for rendering all trials vitiated on the ground of the irregularity of sanction if objection thereto was raised at the first instance itself. The sub-section only says that ‘the Court shall have regard to the fact’ that objection has been raised at the earlier stage in the proceedings. It is only one of the considerations to be weighed but it does not mean that if objection was raised at the earlier stage, for that very reason the irregularity in the sanction would spoil the prosecution and transmute the proceedings into a void trial.””

“11. In a case where the accused failed to raise the question of valid sanction, the trial would normally proceed to its logical end by making a judicial scrutiny of the entire materials. If that case ends in conviction there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant, because the very purpose of providing such a filtering check is to safeguard public servants from frivolous or mala fide or vindictive prosecution on the allegation that they have committed offence in the discharge of their official duties. But once the judicial filtering process is over on completion of the trial the purpose of providing for the initial sanction would bog down to a surplusage”

*“17. ...Under Section 19(3)(a) no order of conviction and sentence can be reversed or altered by a Court of appeal or revision even “on the ground of the absence of sanction” unless in the opinion of that Court a failure of justice has been occasioned thereby. **By adding the Explanation the said embargo is further widened to the effect that even if the sanction was granted by an authority who was not strictly competent to accord such sanction, then also the appellate as well as revisional Courts are debarred from interfering with the conviction and sentence merely on that ground.***

18. Thus the legal position to be followed, while dealing with the appeal filed against the conviction and sentence of

any offence mentioned in 1947 Act, is that no such conviction and sentence shall be altered or reversed merely on the ground of absence of sanction, much less on the ground of want of competency of the authority who granted the sanction.”

(Emphasis Supplied)

27. In view of the above discussion, the submission of the appellant that sanction was not accorded by the competent authority is rejected.

28. The establishment of the demand and acceptance of illegal gratification is a condition precedent for constituting the offences of which the appellant is charged. In the present case, the demand and acceptance of illegal gratification has been sufficiently proved by primary evidence. Complainant (PW-4) has proved the entire prosecution case. Even the panch witness (PW-6), who is an independent witness, has given the details of the incident, thus proving the demand, acceptance and recovery of GC notes from the appellant. The testimony of the complainant (PW-4) and panch witness (PW-6) is further corroborated by the R.O. (PW-7). The relevant extract of the depositions of the complainant (PW-4) and panch witness (PW-6) is as follows:

“Complainant (PW-4)

I along witness panch witness went to the room of the accused Raj Pal present in the Court today (correctly identified) where he was having tea along with his colleague. After seeing me, accused came out from his room and started moving towards outside along with me and panch witness. We reached near a temple on the road. I asked the accused about my OBC certificate then accused enquired from me whether I had brought the pre-settled money on which I replied that I had

brought Rs.200/-. Then accused demanded bribe from me and I took out those treated GC notes from the pocket and gave it in the left hand of the accused and he kept the same in the left pant pocket.

(emphasis supplied)

Panch Witness (PW-6)

I along with complainant went inside the SDM office where accused Raj Pal now present in the court today (correctly identified) was having tea with two other persons. After seeing the complainant, accused had asked to wait for some time. After some time, accused came near the complainant and I along with accused and the complainant came outside the office room of the accused. Thereafter, we came outside the gate of SDM office and we stood near a temple which was situated on the left side of the SDM office. The accused enquired from the complainant whether he had brought Rs.200/- as settled a day before. Complainant enquired about his OBC certificate. Accused asked the complainant to give the money and told him that he would not have to come again and again for his OBC certificate. Thereafter, complainant took out those treated GC notes from his pocket of his shirt and gave them in the left hand of the accused and the accused kept the same in the left pocket of his pant. ”

(Emphasis Supplied)

29. The R.O. (PW-7) has, inter alia, stated:

“At about 1:35 p.m., I received pre-determined signal from panch witness and I along with raiding team reached near the temple. I asked the panch witness, what had happened and he told me that Raj Pal accused present in the Court today (correctly identified) had demanded and accepted bribe money of Rs.200/- from the complainant with his left hand and had kept in the left side pocket of his pant.

I introduced myself as Inspector from Anti Corruption Branch and challenged the accused that he had accepted the bribe of Rs.200/- from the complainant and I offered that if he wanted to

take my search before taking his search, he can do but accused refused to do. Accused became perplexed and admitted his guilt. I instructed the panch witness to recover the bribe money and the panch witness recovered the bribe money of Rs.200/- from left pocket of the pant of the accused. On my directions, the panch witness compared the sl. no. of these recovered GC notes with the sl. no. mentioned in the pre-raid Ex PW4/B, and they tallied. Those recovered GC notes were taken into possession vide seizure memo Ex PW3/B which bears my signatures at point C. The left hand wash of the accused was taken in the colourless solution of Sodium Carbonate which turned into pink. That solution were transferred into two empty small clean bottles which were sealed with the seal of GC. The wash of left pant pocket of the accused was taken in the colourless solution of Sodium Carbonate which also turned into pink. That solution were transferred into two empty small clean bottles which were sealed with the seal of GC Marked paper slips LHW-I & II, PLPW-I & II were pasted on these bottles after obtaining signatures of panch witness and complainant thereon. The pant of the accused was converted into pulanda with the help of same seal after obtaining signatures of panch witness and complainant in the inner portion of the pocket of the pant. I prepared the sample of seal GC on two papers. Those bottles, pulanda of the pant and sample were taken into possession vide seizure memo Ex PW3/B-1 which bear my signatures at point C. I had drawn the post raid proceedings Ex PW4/C bearing my signature at point C”.

30. Therefore in my view, it stands established beyond any shadow of doubt that the appellant demanded and accepted the illegal gratification from the complainant. Further, there was recovery of two GC notes (Ex. P-1 to P-2) of Rs. 100/- denomination from the appellant. The serial nos. of the GC notes had been noted in the pre-raid proceedings (Ex. PW-4/B) and on the recovery of the notes, the Sr. nos. of the notes tallied with them as recorded in the recovery/seizure memo (Ex. PW-3/B).

31. Four aspects have been highlighted by Mr. Birbal. Firstly, it is argued that the R.O. (PW-7), even after handing over the investigation to the I.O. (PW-9) was associated with the case, as it is he who had deposited the samples and other exhibits in the Malkhana. Secondly, it is submitted that the R.O. (PW-7) came in possession of the seal of GC, which was returned by the panch witness (PW-6) to him, and not to the I.O. (PW-9). Thirdly, it is argued that the statement of panch witness (PW-6) was recorded by the R.O. (PW-7) and not the I.O. (PW-9). It has been argued that the R.O. (PW-7) was interested in the success of the trap and could not be considered as independent. Fourthly, it is argued that there is a material contradiction with regard to the place of recovery of the Pant (Ex. P-7)

32. I shall deal with all the four aspects one by one. The submission of the appellant is that on a combined reading of the testimonies of the panch witness (PW-6), I.O. (PW-9) and R.O. (PW-7), it stands established that the seal of GC was handed over to the panch witness (PW-6) after the sealing of the samples, who handed it over to the R.O. (PW-7) and, thus, there were chances of tampering with the samples. In this regard, I may, firstly, take note of the testimony of the R.O. (PW-7). The R.O. (PW-7) deposed that *“seal after use was handed over to panch witness.... Inspector S.S. Sandhu was called at the spot at about 3:45p.m. and I handed over to him the custody of accused Raj Pal, case property, recovered GC notes of Rs. 200/-, exhibits of this case, seizure memos and copy of raid report for investigation.”*. The I.O. (PW-9) has stated that he went to ACB, where he deposited LHW-I and PLPW-I along with sample seal GC with ACP Sh. R.K. Joshi (PW-1) who kept them in his custody. The testimony of the I.O.

(PW-9) is corroborated by ACP Sh. R.K. Joshi (PW-1) who, *inter-alia*, stated as follows:

“Insp. S.S. Sandhu came to my office and handed over to me two bottles sealed with the seal of GC and marked as PLPW-I and LHW-I along with sample seal GC to me for keeping the same in safe custody which I kept in my office almirah which was locked and its key was retained by me.

On 24.03.2000 Insp. S.S. Sandhu again came to me and demanded the exhibits which he had earlier deposited with me for depositing the same with FSL, Malviya Nagar. I accordingly took out the above mentioned exhibits from my almirah with intact seal of GC and handed over the same to Insp. S.S. Sandhu HC Birju Singh who was along with Insp. Sandhu and he in turn handed over those exhibits to HC Birju Singh with the direction that he should deposit the same with FSL, Malviya Nagar. So long the property remained in my custody it remained intact.”

33. This shows that there was no scope for tampering of the hand and pocket washes by the R.O. (PW-7). After the use of the seal of GC, the same was handed over to the panch witness (PW-6). Thereafter, the I.O. (PW-9) was called and handed over, *inter alia*, the sample washes of the hand and the pant pocket. Thus, even if the seal of GC was again handed over to the R.O. (PW-7) by the panch witness (PW-6), the same was of no consequence, since the samples were already out of the control and possession of the R.O. (PW-7). The I.O. (PW-9) proceeded to deposit the samples PLPW-I and LHW-I along with the seal of GC with R.K. Joshi (PW-1), the ACP. Pertinently, the panch witness (PW-6) stated that he returned the seal to the R.O. (PW-7) only in the evening, by when the I.O. (PW-9) had taken control of the sample washes in the afternoon after 3:45

p.m. The samples remained intact, and there was no tampering while they were in custody in ACB. ACP Sh. R.K. Joshi (PW-1) also deposed that at that time, there was no notified malkhana in the ACB. ACP R.K. Joshi (PW-1) is a senior police officer and he deposed that the samples were handed over to him and he preserved them in his custody. The statement of ACP R.K. Joshi (PW-1) inspires confidence, and there is no reason to doubt the same. HC Birju Singh (PW-2) deposed that *“On 24.03.2000 I was posted in anti-corruption branch. On that day, Insp. S.S. Sandhu had obtained 2 sealed bottles, sample seal which were sealed with the seal of GC from ACP R.K. Joshi and handed over the same to me for depositing the same with FSL, Malviya Nagar. I accordingly took the two sealed bottles of this case and sample and a forwarding letter and deposited the same intact in FSL, Malviya Nagar.”*. He further deposed that *“So long the property remained in my custody it remained intact and was not tampered with by me.”*. Subsequently, the FSL in its report (Ex. PW-9/D) stated that the sample was received from HC Birju Singh (PW-2) and was intact. After the test was conducted, the samples were re-sealed with the seals of the FSL. The relevant portion of the FSL report (Ex. PW-9/D) dated 31.03.2000 is as follows:

“DESCRIPTION OF PARCELS & CONDITION OF SEAL/S

The Parcel(s) two in numbers marked (A & B) which were sealed and tallied with specimen seal impression forwarded.

DESCRIPTION OF ARTICLES CONTAINED IN PARCEL

Parcel- ‘A’ : One sealed glass bottle bearing two seals of GC labeled as LHW-I. It contained exhibit A.

Exhibit 'A' : Pink colour liquid approx. 100 ml. with sediments stated to be left hand wash of the accused Shri Rajpal.

Parcel 'B' : One sealed glass bottle bearing two seals of GC labeled as PLPW-I. It contained exhibit B.

Exhibit 'B' : Dark Pink colour liquid approx. 100 ml. with sediments stated to be left pocket wash of the pant of accused Shri Rajpal.

RESULTS OF EXAMINATION

On chemical analysis, exhibits 'A' an 'B' gave positive tests for the presence of phenolphthalein and sodium carbonate.

Note: After examination, remnants of the exhibits were sealed with the seal of FSL TOXI Delhi."

Thus, the FSL report (Ex. PW-9/D) corroborates the oral testimony of HC Birju Singh (PW-2).

34. So far as the submission that the statement of panch witness (PW-6) was recorded by the R.O. (PW-7) and not the I.O. (PW-9) is concerned, once again I do not find any substance in the same. The appellant has sought to make capital out of the fact that the panch witness (PW-6) had stated that his statement was recorded by the R.O. (PW-7) in the evening after 6:00 p.m. on the same day. However, both the I.O. (PW-9) and the R.O. (PW-7) have deposed otherwise. The R.O. (PW-7) stated "*I had not recorded the statement of panch witness u/s 161 Cr. P. C.*". The I.O. (PW-9) deposed "*I recorded the statement of panch witness.*". There is a possibility of witnesses' memory failing owing to such a long lapse of time in conducting the cross-examination. The statement of the panch witness (PW-6) was recorded on 02.03.2000, whereas his cross-examination took place on

11.03.2008, i.e. more than eight years later. In these circumstances, in the light of depositions of the I.O. (PW-9) and the R.O. (PW-7), this Court does not find any merit in the contention of the appellant that the statement of panch witness (PW-6) was recorded by the R.O. (PW-7). I may also mention that the copy of the statement of the panch witness (PW-6) recorded under Section 161 Cr.P.C. shows that the same was recorded by the I.O. (PW-9) and not by the R.O. (PW-7).

35. On the aspect that the R.O. (PW-7) continued to be involved with the case, since he deposited the GC notes, and/or pocket wash bottles and the recovered articles with Malkhana Moharar vide Ex. PW-3/D in the malkhana register, once again, I do not find any merit in the appellant's submission. The testimony of Ct. Mahender (PW-3), who was posted as Assistant Malkhana Moharar in P.S. Civil Lines at the relevant time is pertinent. He states that on 02.03.2000, he was posted as Assistant Malkhana Moharar in the said police station. HC Surender Singh was the in charge of the Malkhana. He categorically stated that Insp S.S. Sandhu i.e. I.O. (PW-9) came to the Malkhana P.S. Civil Lines and deposited with him two GC notes of the denomination of Rs.100 each with the serial numbers in question, two hand washes bottles LHW-II and PLPW-II sealed with the seal of GC along with sample seal of GC and a sealed parcel with the seal of GC stated to have contained a pant besides the personal search articles of the accused Rajpal with him in the Malkhana. He states that he received these articles against his respective endorsement made over the respective seizure memos. He exhibits his endorsement as Ex. PW-3/A, B & C, which are in his handwriting and signed by him. He produced the register no.19, wherein

the articles were mentioned at sl.no.87/2443. He stated that the entry was made by MHC(M) HC Surender Singh at no.1246/00. Pertinently, his statement was not challenged in cross-examination on the aforesaid aspects. The limited cross-examination of Ct. Mahinder (PW-3) was the suggestion given to Ct. Mahinder (PW-3) that so long as the property remained in his custody, it was tampered with.

36. The contradiction pointed out by Mr. Birbal with regard to the place of seizure of the Pant (Ex. P-7) is, evidently, an inaccuracy which has crept in on account of the fading memory of the panch witness (PW-6). Pertinently, the panch witness (PW-6) in his examination-in-chief conducted on 17.05.2007, while deposing with regard to the raid proceedings, *inter alia*, stated as follows:

“The left hand of the accused was dipped in some water type solution which turned into pink. That solution was transferred into two bottles which were sealed with the seal of GC and marked paper slips were pasted on those bottles which were signed by me and the Raid Officer as well as the complainant. The pant of the accused was taken of and the wash of left pocket of the pant was taken in similar style and the colour of the solution turned into pink and that solution was transferred into two bottled which were sealed with the seal of GC and marked paper slips were pasted on those bottles which were signed by me and the Raid Officer as well as the complainant. The pant of the accused was converted into pulanda and was sealed with the seal of GC. On two plain papers impression of that seal was taken. Those bottles and that pulanda and sample seal were also taken into possession vide seizure memo EXPW3/B which bear my signature at point B.

The accused was arrested and his personal search was taken vide memo EXPW3/C which bears my signatures at point

B. Raid Officer had drawn post raid proceedings Ex.PW4/C which bear my signature at point B.”

37. This statement of the panch witness (PW-6) is corroborated by the statement of the complainant (PW-4), who stated:

“The left hand wash and the wash of left pant pocket of the accused was taken in some water like solution separately which turned into pink. That solution was transferred into four empty, small clean bottles which were sealed with the seal of Raid Officer. Marked paper slips were pasted on those bottles after obtaining my signatures. Those bottles were taken into possession vide seizure memo Ex. PW3/B/1 bearing my signature at point A. The pant of the accused was converted into pulanda and was also seized vide seizure memo Ex. PW3/B/1. The Raid Officer had drawn the post raid proceedings Ex. PW4/C bearing my signature at point A.”

38. It was also corroborated by the R.O. (PW-7), who stated:

“The left hand wash of the accused was taken in the colourless solution of Sodium Carbonate which turned into pink. That solution were transferred into two empty small clean bottles which were sealed with the seal of GC. The wash of left pant pocket of the accused was taken in the colourless solution of Sodicum Carbonate which also turned into pink. That solution were transferred into two empty small clean bottles which were sealed with the seal of GC. Marked paper slips LHW-1 & II PLPW-1 & II were pasted on those bottles after obtaining signatures of panch witness and complainant thereon. The pant of the accused was converted into pulanda with the help of same seal after obtaining signatures of panch witness and complainant in the inner portion of the pocket of the pant. I prepared the sample of seal GC on two papers. Those bottles, pulanda of the pant and sample were taken into possession vide seizure memo Ex. PW-3/B-1 which bear my signatures at point C. I had drawn the post raid proceedings Ex. PW-4/C bearing my signature at point C.”

39. In his cross-examination, the R.O. (PW-7) denied the suggestion that *“after the accused was apprehended he was taken to his residence and where his pant was taken off”*. The post-raid proceedings (Ex. PW-4/C) also corroborates that the Pant (Ex.P-4) was seized and made into a pulanda after it being washed with sodium carbonate, and it was sealed with the seal of G.C. This is further corroborated by the statement of Ct. Mahinder (PW-3), Astt. Malkhana Mohararar- who deposed that the I.O. (PW-9) had deposited, *inter-alia*, *“a sealed parcel, sealed with the seal of G.C. stated to have contained a pant besides... ..”*. The discrepancy with regard to the place of seizure of the Pant (Ex. P-7) came in the statement of the panch witness (PW-6), during his cross-examination conducted on 11.03.2008. In the light of the overwhelming evidence, including the primary evidence of the complainant (PW-4) and panch witness (PW-6) himself, as well as the evidence of R.O. (PW-7) and Ct. Mahinder (PW-3), as also the post-raid proceedings (Ex. PW-4/C), it is absolutely clear that the inaccuracy in the statement of the panch witness (PW-6) crept in during his cross-examination on 11.03.2008 due to long passage of time and the fading of memory.

40. At this stage, I may point out that the trial court recorded in para 2 of the impugned judgment that *“During the course of investigation the Raid Officer sent the first part of exhibits to FSL Malviya through constable Birji and later on received FSL report Ex.PW9/D He also collected bio data Mark Y. He sent request Ex. PW5/X to Dy. Commissioner North East District for obtaining sanction u/s 19 of Prevention of Corruption Act, 1988 and received sanction order Ex. PW5/A through covering letter ex. PW5/B*

and after completion of investigation filed the charge sheet in the court”. This is clearly a typographical error, inasmuch, as, it was the I.O. (PW-9) who took the aforesaid steps. This is evident from the testimonies of Sh.R.K. Joshi (PW-1) and H.C. Birju Singh (PW-2).

41. I find merit in the submission of learned APP that the mention of name of R.O. (PW-7) in the malkhana register appears to be an error on the part of the scribe, probably on account of the fact that her name appeared on the seizure memo. The prosecution has proved the complete link evidence to show that the sample was handed over by one police official to another and was kept intact in their custody and that there was no scope for tampering of the hand and pant washes of the appellant. The appellant has not been able to raise even a probable doubt that the samples have been tampered with. In ***Konan Jean*** (supra), this Court has observed:

“21. A criminal trial is a quest for truth. The prosecution is required to prove its case beyond reasonable doubt and not by way of perfect proof free from all blemishes.”

42. Counsel for the appellant has placed reliance on ***Surender Singh*** (supra) on the aspect that the involvement of the R.O. (PW-7) in the investigation, post the conclusion of the raid proceedings vitiated the investigation. The facts of ***Surender Singh*** (supra) are distinguishable from the present case. The relevant extract of ***Surender Singh*** (supra) is extracted below:

“11. From the above FSL report it appears that it was Head Constable Om Prakash who took the sample washes to the FSL on 28th August 2000. However Head Constable Om Prakash himself was not examined. Constable Mahinder Singh (PW-4)

who was posted as an Assistant Malkhana Moharar at PS Civil Lines was examined. He stated that Inspector N.S. Minhas (PW-9) had deposited “two GC notes of Rs. 500 and four bottles RHW-1 and II, LSSPW-1 and II duly sealed with the seal of RS along with sample seal besides the said pulanda and personal search and that I made entry in register No. 19 at Serial NO. 302/2659”, a copy of which is Ex. PW-4/A. A perusal of Ex. PW-4/A shows that it was not PW-9 who had brought the samples to the malkhana. It was in fact the RO, PW-8, who deposited the samples there. This supports the argument of Mr. Sunil Mittal, learned counsel for the Appellant, that it was PW-8 who continued to deal with the whole case without handing over the case property to the IO, i.e., PW-9.”

(emphasis supplied)

43. In ***Surender Singh*** (supra), the complainant himself turned hostile and did not support the case of the prosecution. There was discrepancy regarding who deposited the sample in the FSL. The Assistant Malkhana Moharar deposed that the I.O. deposited the samples, while as per the register records, the raid officer deposited the samples. However, as per the FSL report, another constable took the sample washes to the FSL, who was not examined. Moreover, even the panch witness PW-7 on his cross-examination conceded that he could not hear the talk between the accused and the complainant as they were talking in a low pitch. He also admitted that he had not said to the police that the accused had asked the complainant if he had brought the bribe money. The decision in ***Surender Singh*** (supra) is, therefore, clearly distinguishable on facts and has no application in the present case.

44. In contrast, in the present case, the samples of the hand wash and pocket wash of the pant were deposited with the FSL by HC Birju Singh

(PW-2), who has deposed regarding the same in his examination-in-chief. On a perusal of the FSL report it is confirmed that the samples were actually received from HC Birju Singh (PW-2). The testimony of the R.O. (PW-7) shows that the case property was handed over to the I.O. (PW-9). This is supported by the statements of the I.O. (PW-9), complainant (PW-4), the ACP (PW-1) as well as the panch witness (PW-6) – an independent witness.

45. In any event, the phenolphthalein test is only corroborative evidence, and not primary evidence. If the primary evidence is clear and clinching, the absence or failure of the said test result, or the doubtfulness of the samples, is not relevant. In ***Zakaullah*** (supra), it was held as follows:

*“11. The most important evidence is that of PW-4 - Harendra Singh Sirohi, the Superintendent of Police who arranged the trap. We must mind the fact that he had no interest against the respondent. But the verve shown by him to bring his trap to a success is no ground to think that he had any animosity against the delinquent officer. He made arrangements to smear the phenolphthalein power on the currency notes in order to satisfy himself that the public servant had in fact received the bribe and not that currency notes were just thrust into the pocket of an unwilling officer. **Such a test is conducted for his conscientious satisfaction that he was proceeding against a real bribe taker and that an officer with integrity is not harassed unnecessarily.***

12. The evidence of such a witness as PW4 can be acted on even without the help of any corroboration [vide Prakash Chand v. State (Delhi Administration), 1979 CriLJ 329 and Hazari Lal v. Delhi Administration, 1980 CriLJ 564.

13. The reasoning of the High Court that reliability of the trap was impaired as the solution collected in the phial was not sent to Chemical Examiner is too puerile for acceptance. We have not come across any case where a trap was conducted by the

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

(emphasis supplied)

46. With regard to the contention of the appellant that he was not responsible for issuance of the OBC certificate, and that his duty was to issue only SC and ST certificates, the deposition of Mohd. Ahsan (PW-8) may be considered. Mohd. Ahsan (PW-8) deposed in his chief-in-examination that he was working as SDM Seelampur. He further stated that the appellant was dealing with the issuance of SC and ST certificates and, in addition, was also dealing with the issuance of OBC certificate from 20.02.2000. The deposition of Mohd. Ahsan (PW-8) supports the statement of the complainant (PW-4), who stated that the appellant was dealing with the issuance of OBC certificate. In the cross-examination of Mohd. Ahsan (PW-8), his testimony could not be shaken. Mohd. Ahsan (PW-8) was an independent witness, and there was no reason for him to falsely depose against the appellant. It was not even suggested to him that he was deposing falsely.

47. It is important to note that the file of the complainant was seized from the custody of the appellant vide memo (Ex. PW-4/D). The appellant could have, but did not explain the circumstances in which the file of the complainant was found with him if he was, indeed, not dealing with the

work relating to issuance of OBC certificates. It, therefore, follows that he was dealing with the issuance of OBC certificate. Moreover, it is of no consequence whether the public servant was in a position/ had the authority to do the official act for which he demanded bribe/ gratification. Reliance may be placed on *Chaturdas Bhagwandas Patel vs. State of Gujarat*, (1976) 3 SCC 46 and *Gopal Singh vs. CBI*, (2005) ILR 2 Delhi 35. In *Gopal Singh* (supra) it was held as follows:

“22. ...the prosecution is under no obligation to prove that a public servant demanding bribe was in a position to help the person from whom the bribe was being demanded. The prosecution succeeds the moment it is shown that a public servant had accepted some money from someone, which was not legal remuneration, the presumption under Section 20 of the Act comes into play shifting the burden upon the public servant to explain as to why he had received the money.”

The above submission of the appellant, therefore, has no force and is rejected.

48. Though I do not find any irregularity or defect in the investigation by the police officials, in any event, the accused cannot be acquitted merely on the ground of irregularity/ defect in the investigation by the police officials. In this regard, reliance is placed on *Dayal Singh* (supra). The Supreme Court held as follows:

“27. Now, we may advert to the duty of the Court in such cases. In the case of Sathi Prasad v. The State of U.P., (1972) 3 SCC 613, this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the Court to see if the evidence given in Court should be relied upon and such lapses ignored. Noticing

the possibility of investigation being designedly defective, this Court in the case of Dhanaj Singh @ Shera and Ors. v. State of Punjab, (2004) 3 SCC 654, held:

“5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

28. Dealing with the cases of omission and commission, the Court in the case of Paras Yadav v. State of Bihar, AIR 1999 SC 644, enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

.....

32. In the case of State of Karnataka v. K. Yarappa Reddy, 2000 SCC (Crl.) 61, this Court occasioned to consider the similar question of defective investigation as to whether any manipulation in the station house diary by the Investigating Officer could be put against the prosecution case. This Court, in Paragraph 19, held as follows:

“19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the Investigating Officer in conducting investigation or in preparing the records so unscrupulously? It can be a

guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the Court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by the investigation officers. Criminal Justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.””

(Emphasis Supplied)

Further, in **Karan Singh** (supra), the Court again dealt with the aspect of flawed investigation by the police officials. The court observed as follows:

“17. In Ram Bihari Yadav v. State of Bihar, AIR 1998 SC 1850, this Court observed, that if primacy is given to a designed or negligent investigation, or to the omissions or lapses created as a result of a faulty investigation, the faith and confidence of the people would be shaken not only in the law enforcing agency, but also in the administration of justice. A similar view has been re-iterated by this Court in Amar Singh v. Balwinder Singh, AIR 2003 SC 1164.

18. Furthermore, in Ram Bali v. State of Uttar Pradesh, AIR 2004 SC 2329, it was held by this Court that the court must ensure that the defective investigation purposely carried out by

the Investigating Officer, does not affect the credibility of the version of events given by the prosecution.

19. Omissions made on the part of the Investigating Officer, where the prosecution succeeds in proving its case beyond any reasonable doubt by way of adducing evidence, particularly that of eye-witnesses and other witnesses, would not be fatal to the case of the prosecution, for the reason that every discrepancy present in the investigation does not weigh upon the court to the extent that it necessarily results in the acquittal of accused, unless it is proved that the investigation was held in such manner that it is dubbed as “a dishonest or guided investigation”, which will exonerate the accused. (See: Sonali Mukherjee v. Union of India, (2010) 15 SCC 25; Mohd. Imran Khan v. State Government (NCT of Delhi), (2011) 10 SCC 192; Sheo Shankar Singh v. State of Jharkhand, AIR 2011 SC 1403; Gajoo v. State of Uttarakhand, (2012) 9 SCC 532; Shyamal Ghosh v. State of West Bengal, AIR 2012 SC 3539; and Hiralal Pandey v. State of U.P., AIR 2012 SC 2541).

20. Thus, unless lapses made on the part of Investigating authorities are such, so as to cast a reasonable doubt on the case of the prosecution, or seriously prejudice the defence of the accused, the court would not set aside the conviction of the accused merely on the ground of tainted investigation.

21. This Court in Dayal Singh v. State of Uttaranchal, (2012) 8 SCC 263, has laid down certain norms for taking stern action against an Investigating Officer, guilty of dereliction of duty or misconduct in conducting investigation, and held that the State is bound to initiate disciplinary proceedings against such officers even ignoring the law of limitation, and even if such officer has retired.”

(Emphasis Supplied)

49. I am, thus, of the view that the link evidence has established the complete chain of events.

50. On the aspect that the panchnama (Ex. PW-4/D) amounts to confession, the submission of the appellant is misplaced. Firstly, the prosecution has not relied upon the panchnama (Ex. PW-4/D) to claim that it constitutes an admission of guilt on the part of the appellant. The said panchnama/seizure memo (Ex. PW-4/D) is in respect of the seizure of the complete case papers of the complainant for the preparation of the OBC certificate. No doubt, the same also states that the appellant was demanding Rs.200/- as illegal gratification from the complainant to expedite his case, but the said statement has not been relied upon either by the prosecution, or the learned ASJ – while convicting the appellant as an admission of guilt by the appellant. In **Valibhai Omarji** (supra), the issue was whether the trial Judge committed error in relying on the Panchnama in evidence, which was claimed to be inadmissible – as being hit by the provisions of Section 162 of the Cr.P.C. The Gujarat High Court held as follows:

“The important words in Section 162 of the Code are “No statement made by any person to a police officer”. Therefore the statement must be one to a police officer and unless it is to a police officer, it does not fall within the mischief of Section 162 of the Code. Therefore it is necessary that the statement in question must have the element of communication to a police officer. If a Panchnama is merely a record of facts which took place in the presence of panchas and of what the Panchas saw and heard, as observed in 43 Bom LR 163 : (AIR 1941 Bom 149), but is not a record of a statement communicated to a police officer, it would be admissible under Section 157 of the Evidence Act and would not fall within the ban of Section 162 of the Code of Criminal Procedure. As its very name signifies, it is a document recording what the Panchas saw and heard. At the same time, if a Panchnama does contain a statement which amounts to a statement communicated to a police officer during the course of his investigation, it would fall within Section 162

of the Code. Therefore every time when a Panchnama is tendered in evidence, it would be the duty of the Court to ascertain whether any part of it falls within the mischief of Section 162 of the Code of Criminal Procedure and if it does fall, the Court should take out that portion from being admitted in evidence. It was urged, however, by Mr. Barot that in the instant case, the Panchnama was not recorded by the panchas themselves but its contents were dictated by them and it was the police officer investigating this case who wrote it out and kept the Panchnama in his custody until it was produced in the trial Court. The fact however that it was written out by the officer as dictated to him by the panchas would not, in our view, make any difference, for that is merely a mode in which the Panchnama is recorded, nor would the officer keeping that document with him make any difference. As held in Santa Singh v. State of Punjab 1976CriLJ1875, the mere presence of a police officer when a statement is made does not by itself render such a statement inadmissible. So long as a Panchnama is a mere record of things heard and seen by panchas and does not constitute a statement communicated to a police officer in the course of investigation by him, it would not fall within the mischief of Section 162 of the Code. This- very distinction appears to have been made in 1961 2 Guj LR 664 of the report.”

(Emphasis Supplied)

51. In the present case, the panchnama/ seizure memo (Ex. PW-4/D) is primarily concerned with the seizure of the relevant papers pertaining to the complainant's application to obtain the OBC certificate. The later part of the said panchnama, no doubt, contains an inculpatory statement – though it does not in clear terms purport to be a statement attributed to the appellant. In any event, the same is liable to be ignored [see *Narayana Rao* (supra)]. Even when the same is ignored, it has no bearing on the case of the prosecution, because the prosecution has established its case *de-hors* the said

inculpatory statement recorded in the later part of the panchnama/ seizure memo (Ex. PW-4/D).

52. There is contradiction in the statement of the appellant and the deposition of Jai Lal Bhatti (DW-1) as, the appellant in the answer to Q. 14 in his statement recorded under Section 313 Cr.P.C., answered that it is incorrect that at about 1:30 p.m., he along with the complainant (PW-4) and panch witness (PW-6) came outside the office and proceeded towards the temple near the office. However, Jai Lal Bhatti (DW-1) stated as follows:

*“That person called accused Rajpal outside though accused Rajpal told him that he is not dealing with OBC certificates but he again called accused Rajpal outside and thereafter **accused Rajpal went outside after leaving his lunch.**”*

(Emphasis Supplied)

This shows that the appellant went out of the office with the complainant (PW-4). Thus, the witness of the defence (DW-1) supports the case of the prosecution more than the defence of the appellant. Moreover, he is not a witness to the trap proceedings, and could not throw any light on the same.

53. In the light of the established facts regarding demand and acceptance of the illegal gratification, this Court is bound to draw the presumption under Section 20 of the PC Act i.e. that the appellant had obtained for himself gratification as a motive or reward for issuance of the OBC certificate to the complainant. The appellant has not rebutted the said presumption by leading any evidence in that regard.

54. There is sufficient evidence to establish the offences against the appellant. I do not find any infirmity in the impugned judgment of the learned special judge. Accordingly, the conviction of the accused is upheld. The order of sentence is also upheld.

55. For all the aforesaid reasons, I find no merit in this appeal and the same is, accordingly, dismissed.

(VIPIN SANGHI)
JUDGE

APRIL 15, 2015