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

Judgment reserved on: 12.01.2015

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Judgment delivered on: 02.03.2015

+ **Crl.A. 4/2009**

RAJINDER SINGH @ PRASAD Appellant
Through: Mr. Naveen Gaur, Advocate
with Ms. Kamna Gupta, Advocate

versus

C.B.I. Respondents
Through: Mr. Narender Mann, Advocate with
Mr. Manoj Pant, Advocate
Mr. Utkarsh Kohli, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present appeal is directed against the judgment dated 05.11.2008 delivered by the learned Special Judge, Tis Hazari in Corruption Case no. 131/98, by which the appellant was convicted for the offence punishable under section (u/s) 7 and u/s 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 ('PC Act'). By the order on sentence dated 07.11.2008, the appellant was sentenced to undergo Rigorous

Imprisonment (RI) for a period of two years along with a fine of Rs.20,000/-, and in default of payment of the fine - Simple Imprisonment (SI) for three months u/s 7 of PC Act. For offences punishable under section 13(2) read with section 13(1)(d) of the PC Act, the appellant has been sentenced to undergo RI for two years along with a fine of Rs 20,000/-, and in default of payment of the said fine further SI for three months.

2. The case of the prosecution is that, vide FIR RC No. DAI-1998-A-0019/CBI/ACB/N.DELHI, (Ex.PW 7/A) a case was registered on 10.03.1998 against the appellant, Lower Division Clerk (LDC), Office of Controller of Programme, International Channel, Doordarshan, Mandi House, New Delhi on the written complaint (Ex.PW-5/A) of one Smt. Vinita Mohan R/o N-63, Ram Jagul Park, Laxmi Nagar, Delhi who was examined as PW 5.

3. In the complaint (Ex. PW-5/A), it was alleged that 'Vin Communication'- a production unit of films was run by the complainant at Delhi. She was dealing with production of Television serials, corporate films and advertisements. The complainant allegedly contacted Dr. Nilima Harjal, Dy. Controller of Programme, International Channel, Doordarshan on 02.03.1998 for the purpose of getting her serial "Filmi Reporter" approved under the sponsored category. On contacting Dr. Harjal, she advised the complainant to contact the accused, who was working in her office, for getting further directions regarding the same. According to the complainant Dr. Nilima Harjal and the appellant Rajinder Singh demanded bribe for getting the complainants serial approved.

4. As the complainant was not willing to pay a bribe for her work, she made the written complaint (Ex. PW5/A) to the Superintendent of Police (SP), CBI, Anti-Corruption Branch (ACB), Delhi on 10.03.1998. The complaint, inter alia, records:

“I contacted Shri Rajinder Singh as desired by Dr. Nilima Harjal. Shri Rajinder Singh reiterated the version of Dr. Nilima Harjal and demanded an amount of Rs.10,000/- from me and further demanded that I would have to pay an amount of Rs.6,000/- per month to him. He further directed me to pay this amount on 10.03.98 in the afternoon and directed me to bring this amount along with the pilot episode cassette and synopsis of “Filmi Reporter”.

5. Inspector HS Karmayal (PW-7) was entrusted to lay the trap; he constituted the raiding party, which included CBI officials and two independent witnesses- one Sh. Bhupesh Chander, Office Manager, MMTC, New Delhi (PW-6) and other Smt. Veena, Jr. Office Manager, MMTC (PW-2). Both the independent witnesses were shown a copy of the said complaint (Ex. PW5/A) dated 10.03.1998.

6. The complainant (PW- 5) was made to speak to Dr. Harjal from the CBI office at 1:10 PM, which was recorded on tape. Dr. Harjal asked the complainant about her proposal and told her to speak to Sh. Rajender. At 2:30 PM, the complainant was made to speak to the accused in the presence of the two independent witnesses. The accused repeated his demand and asked her to meet him after 4 PM on 10.03.1998. Thereafter, the complainant produced Rs. 7,000/- consisting of 14 GC notes of Rs 500/- denomination each; the numbers on the GC notes were recorded in the handing over memo (Ex. PW2/C). The said GC notes were treated with

phenolphthalein powder. The witnesses were explained and demonstrated the reaction of phenolphthalein powder with colourless solution of Sodium Carbonate. The treated GC notes were handed over to the complainant and kept in a small leather ladies hand bag of the complainant, with directions to hand over the GC notes to the accused only on his specific demand of the money, or to any other persons as per his directions, and not otherwise. Smt. Veena (PW-2), one of the independent witnesses, was directed to act as a shadow witness and to be present at a close distance to be able to hear the conversation between the accused and the complainant. She was directed to give a signal, on the acceptance of the bribe by the accused, by scratching her head with both the hands.

7. Thereafter, in the presence of the independent witnesses, PW-2 and PW-6, a remote cassette recorder-cum-receiver, remote mic-cum-transmitter and a cassette of TDK make were arranged, and the cassette was checked for any pre-recorded voices. Voice of both the independent witnesses was recorded on the cassette as an introduction and thereafter, they were made to sign on the paper label pasted on the cassette. The remote mic-cum-transmitter was given to the complainant and the recorder-cum-receiver to the other independent witness, Sh. Bhupesh Chander (PW-6), for hearing the conversation through an ear phone. Another cassette recorder was also taken by the raiding party to make a copy of the recording at the stop. These proceedings were completed by about 3:45 PM. Thereafter, the trap party left the CBI Office and reached near Mandi House, Copernicus Marg at about 4:15 PM. The complainant along with the shadow witness, Smt. Veena (PW-2), proceeded towards the mocchi (cobbler) sitting on the

footpath adjacent to the wall of Doordarshan office (Mandi House) and contacted the accused, who directed them to go inside and wait at the lawns of Rabindra Bhawan and sit there. Both, the complainant and the shadow witness (PW-2), went inside Rabindra Bhawan lawns and sat there. Soon the accused arrived and joined the complainant and the shadow witness (PW-2).

8. At 4:30 PM after the accused accepted the bribe, the shadow witness (PW-2) gave the pre-decided signal and, forthwith, the trap party and the independent witness (PW-6) rushed inside the Rabindra Bhawan lawns and caught the appellant by his wrists. On the accused being asked whether he accepted any money from the complainant, he kept quiet. The complainant informed them that she had handed over the video cassette of the pilot episode and synopsis to the accused on his demand and she had also handed over the amount of Rs 7,000/- to the accused after he demanded for it and he accepted the same. The video cassette (Ex. P-3) and the synopsis (Ex. PW-2/B) were accepted by him through his right hand and, the amount of Rs 7,000/- by his left hand and kept in upper left pocket of his safari shirt.

9. Sh. Bhupesh Chander (PW-6), the independent witness, recovered the sum of Rs. 7,000/- consisting of 14 GC notes of Rs 500/- denomination each from the upper left safari shirt pocket of the accused. The number on the GC notes recovered from the accused tallied with the numbers mentioned on the handing over memo (Ex. PW- 2/C). The left hand of the accused and upper left pocket of his safari shirt turned pink on being separately washed with the colourless solution of Sodium Carbonate. A rough sketch of the scene was prepared, which is Ex. PW 2/H. The micro cassette on which the incident was recorded was played and heard by all. The complainant and

independent/shadow witness, Smt. Veena (PW-2), identified their voices. The complainant also identified the voice of the accused in respect of the conversation which took place at the spot. A recovery memo (Ex. PW-2/E) was prepared at the place of incident and thereafter, the trap party along with the independent witnesses returned to the CBI office. The personal search of the accused was conducted and a memo (Ex. PW 2/G) in this respect was prepared.

10. Thereafter, CFSL, vide its report No. 147 dated 30.04.1998 (Ex. PW 8/D), confirmed presence of phenolphthalein and Sodium Carbonate on the exhibits marked as LHW and LSPW of the accused. Sanction for prosecution of the appellant was granted vide Ex. PW 3/A. Charges were framed against the accused on 23.03.2009 for offences punishable u/s 7 and u/s 13(2) read with section 13(1)(d) of the PC Act. The accused pleaded 'not guilty' and claimed for trial. The prosecution produced 8 witnesses in order to prove its case. They were: PW 1 Sh KS Chhabra, Sr. Scientific Officer-cum-Asstt. Chemical examiner, who proved his report Ex. PW 1/A. PW-2 Smt. Veena was the shadow witness. PW3 Sh Amar Nath Shetty proved the sanction order. PW4 Sh. Satish Chander Aggarwal deposed about the duty of accused Rajender Prasad LDC. PW5 Ms. Vinita Mohan was the complainant. PW-6 Sh. Bhupesh Chander was the recovery witness. PW7 Inspector HS Karmyal was the Trap Laying Officer (TLO), and PW8 Inspector Mridula Shukla was the IO of the case.

11. Learned counsel for the appellant submits that demand of gratification – an essential ingredient of the offences with which he was charged, was not established by the prosecution in this case. Mere recovery of the marked GC

notes from the accused does not establish the offence; conscious demand of gratification by the accused himself, and none other, has to be established. If there is no conscious demand, the accused cannot be held guilty for the offence under Section 7 read with Section 13(1)(d) of the PC Act. Ld. counsel relies on the examination-in-chief of PW5, the complainant. In her examination-in-chief PW-5 had stated that the accused was informing the complainant *“about the fees, which has to be paid, but he was not demanding any money”*. Therefore, demand of gratification by the accused is not established by the star witness of the prosecution i.e. complainant. Ld. counsel submits that the demand had been made by Dr. Nilima Harjal - who had not been proceeded against on account of her connections, and the accused was made the scapegoat.

12. Ld. counsel further submits that the appellant had never demanded, or taken, or fixed any terms of payment of gratification with the complainant as he had never met her before 10.03.1998. On 10.03.1998, Dr. Neelima Harjal sent the accused to meet the complainant and collect whatever she gave to him. He was only obeying the orders of his boss. He was not aware of any such transaction between the two. He relies on the deposition of the complainant (PW-5), wherein she deposes that she met Dr. Neelima Harjal in the office of Doordarshan, who asked for bribe. Learned counsel submits that the accused was a small fry, and was not in a position to get the complainant's pilot of the serial approved. Thus, there was no occasion for the accused to demand, or the complainant to give any gratification to the accused.

13. Ld. counsel submits that complainant (PW-5) in her cross-examination conducted on 09.10.2007 by the counsel of the accused had stated that, *“I gave my compliant to SP Anil Kumar on 6th or 7th March, 1998 when I visited the CBI for the first time. My original complaint is not on record and is not shown to me. My original complaint was only against Neelima harjal and not against Rajender Siingh”*. By placing reliance on the above statement, learned counsel for the appellant submits that only after the trap had been laid and executed, when the accused was arrested by CBI, the complainant was instructed to give a fresh complaint on basis of the draft given to her by CBI. The Complainant further deposed that *“there was one officer Mr. Singh in the CBI Officer, who had written the matter of the complaint on a piece of paper, which was copied by me, as I do not know English properly.”* Ld. counsel submits that shadow witness (PW-2) in her cross-examination deposed that she had signed the complaint. PW 2 had, *inter alia*, stated *“In my view complaint shown to me was in English. I had put my signatures on the complaint in token of seeing the same.”* Ld. counsel submits that, however, the signature of PW-2 is missing on the complaint (Ex. PW5/A). Ld. counsel submits that this omission of the signature of PW-2 on the complaint Ex. PW5/A establishes that the compliant – on the basis which the accused is prosecuted, is not the original complaint.

14. Further submission of the appellant is that the time frame given by the prosecution is not reliable. According to their case, the FIR (Ex. PW 7/A) was registered at 10:30 AM. The SP asked the TLO to verify the allegations, which was done within 15 minutes. Thereafter, a decision to lay the trap was also taken and two independent witnesses were arranged. The witnesses

reached in half an hour, but the TLO could not tell the exact time of their reaching. However, the independent witnesses had said, in their statements, that they reached the office at about 10 AM or 11 AM. The shadow witness (PW-2) stated that she received a written order to be in office by 10 AM. Similarly, recovery witness (PW-6) received a written order one day prior i.e. on 09.03.1998 with directions to be in the office by 10 AM. As the independent witnesses were required to be present at the CBI by 10/11 AM on 10.03.1998, therefore, it shows that the complainant had written the complaint before 10.03.1998.

15. Ld. counsel submits that the CFSL report marked as Ex. PW 8/D does not support the prosecution. The CFSL report stated that the recording on the cassettes marked as QA(T), SA(NH) and SA(RP) were not under identical conditions and the analysis could not be carried out. Further, voice spectrum comparison could not be done as the recording does not have sufficient common sentences.

16. Ld. counsel for the appellant places reliance on the following decisions:

- i. ***Hari Singh Yadav vs State***, 2014 (2) JCC 982;
- ii. ***T.C. Chawla vs C.B.I.***, 2014 (3) JCC 2005;
- iii. ***B. Jayaraj v. State of A.P.***, 2014 (4) Scale 81.

17. Ld. counsel for the respondent CBI submits that the complainant turned hostile during the trial. Consequently, she was declared hostile and was cross examined by the prosecution. The Court had also put several

questions to her. She kept changing her version from time to time. In this regard, learned counsel has read out the deposition of PW-5 in extenso. He submits that even though the complainant has turned hostile, there is sufficient evidence to establish the appellant's guilt since, apart from the complainant, the other prosecution witnesses in particular the shadow witness PW-2, have completely established the demand and acceptance of bribe by the appellant. He submits that the prosecution can rely on that part of the deposition of the hostile witness, which stands corroborated by other evidence. Merely because the complainant/ witness had turned hostile, her entire testimony may not be discarded. Learned counsel submits that the shadow witness is an independent and disinterested witness. She is reliable and credible in her depositions. I have been taken through the evidence, which shall be taken note of shortly.

18. Ld. counsel submits that the essential components of Sec 7, Sec 20 and Sec 13(1)(d)(i) of the PC Act have been established by the prosecution. Explanation (d) to Section 7 explains that "*A motive or reward for doing*" means "*A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression*". Therefore, merely because the appellant was only a LDC, it does not follow that he did not accept the gratification for himself or for any other person, other than legal remuneration, as a motive or reward for getting the serial of the complainant approved.

19. He submits that the legal and mandatory presumption under Section 20 of the PC Act is bound to be raised in the present case, because the acceptance of gratification has been clearly established by the complainant-

corroborated by the forensic report in respect of LHW and LSPW; the shadow witness (PW-2), and; the recovery witness PW-6. Thus, the Court is bound to presume that it was for motive or as a reward, that the gratification was accepted. He submits that the appellant has not dislodged the said presumption in the present case. In this regard, the answers given by the appellant to question posed to him under Section 313 Cr.P.C. have been referred to. Learned counsel submits that the accused could not provide any explanation for the money found on him. He submits that Section 13(1)(d)(i) of the PC Act – which states that criminal misconduct is committed by a public servant if he “*by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage*”, stands established in the present case beyond reasonable doubt.

20. Learned counsel for the respondent CBI further submits that the complaint dated 10.03.1998 (Ex. PW-5/A) very explicitly states that an amount of Rs.6,000/- per month was demanded for and by the accused, besides the amount of Rs.10,000/- for Dr. Harjal. Further, the FIR (Ex. PW7/A) was registered at 10:30 AM on 10.03.1998 and, in the FIR, the complainant has named both – the accused and Dr. Harjal. Thus, to say that the complaint was got written after the trap proceedings is not correct. Learned counsel submits that what the appellant claims as material contradictions and inconsistencies in the case of the prosecution are minor and immaterial inaccuracies and embellishments, which are known to result on account of imperfect recollection and failing memories of the witnesses with passage of time. However, the core of the prosecution case is intact and the guilt of the appellant is proved beyond reasonable doubt.

21. So far as Dr. Harjal is concerned, learned counsel submits that in the FIR (Ex. PW 7/A), the complainant named both – the accused and Dr. Harjal, but the charge sheet was filed only against the accused since the prosecution could not gather enough evidence against Dr. Harjal. The appellant sought the summoning of Dr. Harjal as an accused under section 319 of Cr.PC. However, this request was declined by the Trial Court. The appellant even approached this Court against the said order of the Ld. Trial Court, but this Court as well dismissed his petition.

22. Ld. counsel for the respondents places reliance on the following decisions:

- i. *Hazari Lal vs Delhi Administration*, (1980) 2 SCC 390;
- ii. *Mahesh Prasad Gupta vs State Of Rajasthan*, (1974) 3 SCC 591;
- iii. *C.K. Damodaran Nair vs Government of India*, (1997) 9 SCC 477;
- iv. *M. Narsinga Rao vs State of A.P.*, (2001) 1 SCC 691;
- v. *T. Shankar Prasad vs State of Andhra Pradesh*, (2004) 3 SCC 753,
- vi. *B. Noha vs State of Kerala and Anr*, (2006) 12 SCC 277;
- vii. *State of UP vs M. K. Anthony*, (1985) 1 SCC 505;
- viii. *M.O. Shamshuddin vs State of Kerala*, 1995(II) Crimes 282 SC : (1995) 3 SCC 351;
- ix. *State of U.P. vs Dr.G.K. Ghosh*, AIR 1984 SC 1453;
- x. *State of UP vs Zakaullah*, (1998) SCC (CrI.) 456;

xi. *Koli Lakhmanbhai Chanabhai vs State of Gujarat*, AIR 2000 SC 210; and

xii. *Sat Paul Vs. Delhi Administration* AIR 1976 SC 294

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

24. There does not appear to be any force in this submission of the appellant that the complaint-Ex.PW5/A was got written after the trap proceedings. Pertinently, the FIR (Ex. PW 7/A) was registered at 10:30 AM on 10.03.1998 on the basis of the written complaint of the complainant, i.e. Ex.PW5/A. If the version of the defence were true – that the complaint was written after the apprehension of the accused in the trap proceedings, then the FIR would not have borne the time of 10:30 a.m., since the trap was laid only in the afternoon at about 4:30 p.m. on 10.03.1998. The complaint Ex. PW-5/A contains an endorsement at point 'X' directing H.S. Karmyal (PW-7) to verify the complaint and to lay a trap. This noting was made by the S.P. Sh. Anil Kumar (as disclosed by PW-7 in his examination-in-chief dated 09.04.2007). The said note/endorsement is dated 10.03.1998. It is only on the basis of the said instruction that Insp H.S. Karmyal (PW-7) acted as the TLO. On comparison of the FIR (Ex. PW 7/A) and the written complaint, it shows that the FIR (Ex. PW 7/A) is identical to the complaint. Both are against the appellant and Dr. Harjal. The Handing Over memo (Ex PW-2/C) was prepared before going to the place of incident. It has the name of the accused, and not of Dr. Harjal and was signed by, *inter alia*, the complainant, the shadow witness (PW-2) and the recovery witness (PW-7) and is also dated 10.03.1998. Further, the memo also notes that the

gratification was to be given to the accused, only once he made demand of the same, which also shows that the complaint was made by the complainant against Dr. Harjal and the appellant before the trap proceedings.

25. The submission founded upon the statement of PW-2 that she had signed the complaint (PW-5/A), but the same, in fact, did not bear her signatures – which shows that the same was subsequently replaced, has no force. This is for the reason that PW-2 was cross examined on 31.01.2008, which is ten years after the incident. Due to the time lapse between the date of the incident and her cross examination, it is likely that on account of confusion in her mind with regard to the documents on which she appended her signatures, the said witness deposed inaccurately. Therefore, on this basis, it cannot be said that the complaint had been changed after the trap, or that the complaint dated 10.03.1998-Ex.PW5/A is not the original complaint of the complainant. This is a minor embellishment attributable to the fading memory with passage of time.

26. The appellants submission that the time frame provided by the prosecution is not reliable, as the independent witnesses deposed that they may have received the order to be present in the CBI office a day prior i.e. on 09.03.1998 also has no merit. As discussed above, confusion could be present in the mind of the independent witnesses as to when the order was received by them, as the cross-examination took place after almost 10 years of the incident. Thus, they did not remember the date on which the orders were received by them. PW-2 stated that she did not remember whether she received the written instructions on the same day, or a day prior to that. Similarly, PW-6 stated that he had received the written orders to go to CBI

office on the same day. He again stated that the office order might have been received one day prior with a direction to go to CBI office at 10:00 a.m. It was natural that on account of the passage of nearly ten years from the date of trap till the time the statement of these witnesses were recorded, they were not sure as to when they had received the orders for joining the trap. Thus, it cannot be assumed that the independent witnesses had been intimated prior to 10.03.1998 that they had to be in the CBI office on 10.03.1998 to be witnesses to the particular trap in question. There is nothing to show that they were asked to be in the CBI office in relation to the raid in question. It is well known that the general public does not like to get associated with such like cases as witnesses. Merely because independent public servants may be assigned the duty to stand as witnesses in such trap cases, does not lead to the inference that they are in any way interested in the success of the prosecution case, or that they lose their character as disinterested and independent witnesses. Such witnesses, who are responsible public servants and enjoy security of their tenure and service, are under no obligation or compulsion to side with the prosecution. There is no reason to disbelieve their testimonies, particularly when the same stand corroborated by other evidence brought on record. As such, the discrepancy in the time frame, which the appellant highlights, does not establish the fabrication of the trap proceedings or even throw a doubt about the same. Therefore, the contention of the appellant that the complaint dated 10.03.1998 is not the actual complaint of the complainant, cannot be accepted.

27. The appellant's submission that as per the CFSL report dated 09.09.1998 (Ex. PW-8/D), the spectrographic analysis of the alleged telephonic conversation recorded in cassette marked QA(T) with the specimen voice samples of Neelima Harjal (Ex. SA (NH)) and the appellant (Ex. SA (RP)) could not be carried out, because the recordings had not been done under identical conditions, and that even the auditory analysis of conversation recorded in cassettes marked QA (MC) and QA(TR) (which were found to contain the same set of conversation) could not be carried out with SA(RP) (the specimen voice of the appellant), as the specimen and the questioned recordings do not have sufficient common sentences, has merit. This implies that the reliance placed by the trial court on the tape recordings and the transcripts prepared from the said tape recorded conversations was misplaced. Therefore, it would require examination whether independent of the tape recorded conversation, there was sufficient evidence to conclude, beyond reasonable doubt that the appellant is guilty of the offences as charged.

28. The main contention of the appellant is that the important element of 'demand' is not present in this case, as the demand was made by Dr. Harjal, and the accused cannot be prosecuted for the same. The appellant contends that he was obeying the orders of his boss, Dr. Harjal.

29. Learned counsel for the appellant placed heavy reliance on the testimony of the complainant, wherein she stated that the appellant "*was telling me about the fees, which has to be paid, but he was not demanding any money*".

30. Firstly, the complaint Ex. PW-5/A, as noticed hereinabove, records:

“I contacted Shri Rajinder Singh as desired by Dr. Nilima Harjal. Shri Rajinder Singh reiterated the version of Dr. Nilima Harjal and demanded an amount of Rs.10,000/- from me and further demanded that I would have to pay an amount of Rs.6,000/- per month to him. He further directed me to pay this amount on 10.03.98 in the afternoon and directed me to bring this amount along with the pilot episode cassette and synopsis of “Filmi Reporter”.

(emphasis supplied)

Thus, as per the complaint, the accusation was, *inter alia*, against the appellant that Rs.6,000/- was payable “to him”.

31. Secondly, the shadow witness PW-2, who is an independent witness, has clearly deposed with regard to the demand made by the appellant. She, *inter alia*, stated:

“After sometime accused Rajinder Singh present in court (correctly identified) also reached there and sat on the lawn. Accused Rajinder Singh had remarked “AISİ BATEN PHONE PAR NAHİN Kİ JAATİ. MAİDAM SE BAAT NAHİN KARNİ CHAHİYE THİ. SAAMNE TABLE PE BAİTH KE Hİ BAAT HONİ CHAHİYE. Accused also said “UPAR BHİ KAAFI LOGO KO PAİSA DENA PARTA HAI”. Accused also said “HAR MAHİNE CHEH HAZAAR RUPAYE DENE PARENGE”. During said conversation, accused demanded the money and the complainant passed on tainted Rs.7000/- to the accused. Complainant told the accused “AAJ TO MAIN SAAT Hİ LAİ HUN”. She also said that she will pay the balance amount Rs.3000/- on the coming Monday. Accused accepted the money with left hand and kept it in the left front pocket of his shirt”.

(emphasis supplied)

32. In the cross-examination of PW-2, the accused could not shake the testimony of PW-2 on the aspect of demand of gratification. She denied the suggestion that the accused had never demanded any amount. She also denied the suggestion that the accused had told the complainant Vinita that some 'fee' is required to be paid while submitting the pilot episode cassette and synopsis.

33. So far as the complainant PW-5 is concerned, she had turned hostile. However, she had also supported the case of the prosecution as would be evident from the following extract of her deposition -

- a) In her examination in chief, though she claimed that she lodged a complaint with the CBI on 6th or 7th of March, 1998, she admits that *"the complaint is in my hand and bears my signature. My complaint is Ex. PW-5/A"*. This complaint is dated 10.03.1998.
- b) She admits that two independent witnesses were called by the CBI office – one was a lady and the other was a gent; the lady witness was directed to remain with her as a shadow witness; the currency notes of Rs.7,000/- were in the denomination of Rs.500/- each; the sample voice of both the witnesses were recorded in the cassette; thereafter on the direction of CBI office, the complainant contacted Mrs. Neelima Harjal on telephone from the CBI office and she spoke to her; she told Mrs. Harjal about the arrangement of money as demanded by her.
- c) She identified the accused in court.

- d) The complainant stated that the currency notes were treated with an invisible powder and she was informed that anyone who touches the notes and when the hand is washed, the colour of water will change into pink; she stated that the currency notes were then handed over to her which she kept in her purse.
- e) She admitted that the witness who accompanied her was a lady.
- f) She admitted that Rajender Singh, the accused (identified in Court) came to the complainant at the park.
- g) She stated that the hand wash as well as pocket wash of the shirt of the accused were taken in separate solutions of sodium carbonate, which turned pink. They were transferred into separate bottles and were sealed and labelled. The spot proceedings were recorded. The recovery memo Ex. PW-2/E bears her signature at point 'C'.
- h) The complainant identified the currency notes used in the trap as Ex. P-4 to P-17.

34. Since the complainant turned hostile – as she refused to identify the voices of the persons recorded in the cassette (even though the Trial Court records that the recording of the cassette is very clear and decipherable), the complainant was allowed to be cross examined, as she was resiling from her statement made to the CBI. In her cross examination by the CBI, she stated, *inter alia*, as follows:

“It is correct that CBI had gone to the spot as Rajinder Singh had to come there. It is correct that Rajinder Singh had

demanded the money during telephonic conversation, which took place in CBI office”.

The complainant was also put questions by the Court and in response to the said questions, she stated, inter alia, as follows:

“I have correctly stated in my complaint that Rajinder Singh reiterated the version of Dr. Neelima Harjal and demanded an amount of Rs.10,000/- from me and further demanded that I would have to pay an amount of Rs.6000/- per month to him.

C.Q It is correct that Rajinder Singh directed me to pay this amount on 10.3.98 in the afternoon and narrated me to bring this amount alongwith pilot cassette and synopsis of “FILMI REPORTER”.

C.Q It is correct that as I did not want to pay the bribe, I went to CBI officer. I could not arrange Rs.10,000/- and I had taken Rs.7000/- with me to the CBI office. I had a talk with Dr. Neelima Harjal and then I had a talk with accused on telephone from CBI office. He directed me to come to the lawn of Ravinder Bhawan”.

.....

“The proceedings conducted at the spot were signed by me, which are Ex. PW2/E. My signatures are on each page at point-C”.

35. Pertinently, PW-5 turned hostile only during her examination-in-chief on 08.08.2005. Before that, her statement was recorded firstly on 07.02.2002, then on 30.10.2002, and again on 30.06.2003 – when she supported the case of the prosecution. Therefore, the possibility of the complainant being won over during the course of trial cannot be ruled out.

36. The evidence of a hostile witness, to the extent it supports the version of the prosecution can be relied upon and conviction can be based on it, if it is corroborated by other reliable evidence (See *Koli Lakhmanbhai Chanabhai* (supra) and *Sat Paul* (Supra)). In the present case, the testimony of the complainant supporting the version of the prosecution stands duly corroborated by the testimonies of the shadow witness; the recovery witness; the TLO, and the forensic report of the appellants hand and pocket wash.

37. Reliance placed on portions of the testimony of the complainant to claim that there was no demand for bribe by the appellant, and that only ‘fee’ was being discussed is misplaced. Pertinently, the complainant, who was declared hostile by the prosecution, in her cross-examination stated that she did not know English properly, and hence, could not state if the complaint had been written correctly in English or not. This stand of the complainant impinges on her credibility when it comes to her endeavour to save the appellant. The complainant had given her qualification as a Graduate with English Literature as one subject, and MA Economics. It is unbelievable that a person, who has studied English Literature as a subject during her Graduation, and is a post-graduate in MA Economics, would not have even elementary understanding of the English language used in the complaint Ex PW-5/A. Pertinently, she stated that she had written the complaint Ex PW-5/A in her own handwriting. How could she write the complaint in her own handwriting if she did not know that the same had been correctly written by her? Moreover, as noticed herein above, she – upon being cross examined by the prosecutor and upon being questioned by

the Court, again changed her version and supported the case of the prosecution. Therefore, reliance placed by the appellant on a part of the statement of the complainant is of no avail.

38. Pertinently, the appellant has not advanced any submission with respect to the statement of Sh. Bhupesh Chandra PW-6 – who was an independent and disinterested witness to the recovery of the bribe amount of Rs.7,000/- from the appellant. He deposed, *inter alia*, that:

“When I reached the place, I saw the accused was sitting on the grass in the park and he was being held by CBI Inspector. Complainant and witness Veena were also present there. I was asked to take search of the accused. I found cash Rs.7,000/- and Rs.5/ Rs.6/- odd further amount in the front packet of shirt. The currency notes worth Rs.7000/- were checked and compared with handing over memo and found to be the same. CBI officers had prepared site plan Ex. PW-2/H, bears my signatures. They had also spoken on phone with senior officers in CBI headquarters, I had thereafter accompanied the CBI officers to the office of superior officer of the accused.

Before that the wash of the pocket of the shirt was taken in a solution, which turned red, which has then in a bottle and then sealed. The proceedings were recorded vide recovery memo Ex PW-2/E, each of the five pages of which bear my signatures. Accused was arrested after personal search vide Ex PW-2/G, which bears my signatures. The pocket wash bottle is Ex P-2, bears my signatures. I have seen bottle Ex P-1, which is also bears my signatures. Shirt is Ex P-18. I have seen wrappers Ex P-23 and Ex P-24. They also bear my signatures. I have seen currency notes Ex P-4 to Ex P-17. These are the same GC notes, which were used in the trap”.

“It is correct the wash of left hand of accused was also taken on separate solution, which also turned pink. Said hand wash was also put in bottle and sealed as per Ex P-1”.

39. He further deposed in his cross-examination, *inter alia*, as follows with regard to recovery of the bribe amount from the appellant:

“I reached after about two minutes. Accused was in seating conditions and he was caught by arms. CBI team has asked to me to search the accused and I recover the money from the front shirt pocket of accused. Only the money was recovered from pocket of accused. Some documents were also recovered from the accused”.

40. PW-1 Sh. K.S. Chhabra, SSO-I, CFSL proved his report Ex. PW-1/A with regard to the analysis of the two sealed bottles marked LHW and LHPW containing the light pink colour liquid and pink colour liquid respectively. These samples tested positive for presence of Phenolphthalein and Sodium Carbonate. Nothing material was elicited from this witness in his cross-examination by the appellant.

41. The handing over memo Ex. PW-2/C records the pre-trap proceedings in the office of the CBI. The same was signed by, *inter alia*, the complainant, the shadow witness Veena (PW-2), the witness to the recovery Bhupesh Chander PW-6 and the officers of the CBI. The recovery memo Ex. PW-2/E records the proceedings with regard to recovery of the GC notes from the appellant. The same also bears the signatures of the complainant, the shadow witness and the recovery witness. The statements of the shadow witness and the recovery witness stand corroborated by the handing over memo Ex. PW-2/C, as well as the recovery memo Ex. PW-2/E. The appellant was not able to throw any doubt with regard to the said proceedings. Thus, the demand and acceptance of bribe by the appellant stands clearly established beyond any shadow of doubt in the present case.

42. Reliance placed by the appellant on *Hari Singh Yadav* (supra) is completely misplaced. In that case, the appellant/accused had not accepted the money in either of his hands. It had not even been counted by him. The defence of the appellant was that the tainted money was thrust by the complainant in his pocket to implicate him. The Court held that this possibility could not be ruled out as the complainant was nurturing a grudge against the appellant for instituting proceedings under Section 107/150 Cr PC against his sister. There was no definite evidence of demand of bribe. In the absence of any definite evidence of demand of bribe, acceptance of tainted money by the appellant, under unusual circumstances, was held to be a mere suspicion which could not be a substitute for proof. However, in the present case, as discussed above, both the demand and acceptance of bribe by the appellant stands duly established not only by the testimony of the shadow witness and the witness to the recovery – both of whom are independent witnesses, but also by the forensic evidence, namely, the hand and pocket wash of the appellant.

43. The decision in *T.C. Chawla* (supra) also does not advance the case of the appellant. In this case, the defence set up by the appellant/accused with regard to the circumstances in which the money was accepted by him was held to be a probable defence. The same cannot be said about the present case.

44. Reliance placed on *B. Jayaraj* (supra) is also misplaced. In the said case, the complainant did not support the case of the prosecution. The prosecution did not examine any other witness present at the time when the money was allegedly handed over to the accused by the complainant to

prove that the same was pursuant to any demand made by the accused. As noted above, in the present case, there is sufficient independent evidence of the shadow witness, which is corroborated by the evidence of the recovery witness and the pre-raids and post-raids proceedings as also the forensic examination of the phenolphthalein test.

45. The Supreme Court in *T. Shankar Prasad* (supra), relying on *Madhukar Bhaskarrao Joshi v. State of Maharashtra*, (2000) 8 SCC 571, held as follows:

“In Hazari Lal v. State (Delhi Admn.) 1980 Cri LJ 564 it was observed that there is no requirement to prove passing of money by direct evidence. It may also be proved by circumstantial evidence. In Madhukar Bhaskarrao Joshi v. State of Maharashtra (2000) 8 SCC 571 it was observed thus:

"The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word "gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing". If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the

context to mean any payment for giving satisfaction to the public servant who received it" .

It is to be noted that decisions relied upon by the learned counsel for the accused were considered in Narsinga Rao's case (supra) and it was held that the principles had no application as the findings recorded depend upon the veracity of the testimony of the witnesses, so far as Suraj Mal's case (supra) is concerned, and the observations in Sita Ram's case (supra), were to be confined to the facts of that case and no legal principle for future application could be discerned therefrom."

46. In **M.K. Anthony** (supra), the Supreme Court held that while appreciating evidence, the evidence should be looked at as a whole, and not separately. It observed:

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the : root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in

the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned Counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible.”

47. In the present case, the statutory presumption under Section 20 is bound to be raised since the demand and acceptance of gratification have been conclusively established. Since the appellant has not been able to dislodge the said presumption, it stands established that the gratification was accepted as a reward or with the motive of getting the tele serial of the complainant cleared. It is irrelevant whether the appellant was himself in a position to get the complainant's tele serial cleared – in view of the explanation (d) to Section 7 of the Prevention of Corruption Act. Pertinently, the appellant could not explain the recovery of the treated G.C. notes from him in the trap proceedings and did not give any satisfactory reply in his statement recorded under Section 313 Cr.P.C.

48. Applying the test laid down in *M.K.Anthony* (supra) with regard to the appreciation of evidence, I have not the slightest doubt that the prosecution has been able to establish charges against the appellant. Consequently, I do not find any infirmity in the impugned judgment and order on sentence passed by the learned Special Judge, Tis Hazari. Accordingly, the

conviction of the accused is upheld. The order of sentence awarded to the appellant is also upheld. The appeal stands dismissed. Since the sentence had been suspended by this Court, the accused is accordingly, directed to surrender within one week to undergo his remaining sentence.

VIPIN SANGHI, J

MARCH 02, 2015