

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 210 OF 2011

Sanjay s/o Ishwar Bhanushali .. Appellant

Versus

The State of Maharashtra .. Respondent

Mr.S.R. Chitnis, Senior Advocate with Mrs.Vrishali Raje, Advocate for the appellant.

Mr.V.B.Konde Deshmukh, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

ORDER RESERVED : 9th MARCH, 2016

ORDER PRONOUNCED : 27th APRIL 2016

JUDGMENT :

1 This Appeal is directed against the judgment and order delivered by the Special Judge (appointed under section 3 of the Prevention of Corruption Act) for Greater Mumbai, convicting the appellant of offences punishable under Section 7 and Section 13(1)(d) of the Prevention of Corruption Act (hereinafter referred to as 'P.C. Act') and sentencing him to suffer Rigorous Imprisonment for 3(three) years, and to pay a fine of Rs.7,500/- on each of the said two counts.

2 The prosecution case, as put forth before the trial Court, can be best taken from Form No. 5E of the Printed Prescribed Proforma of the police report (Final Report Form) u/s.173 of the Code of Criminal Procedure. In brief, it be stated thus :

Hemant Bhagwat, (hereinafter referred to as 'the complainant') at the material time, was doing his Garment business under the name and style of "Four Seasons Garments" at Unit No.IV, Star Delta Industrial Estate, Saki Naka, Andheri (East), Mumbai-400072. He had no permits or licences required for the said business. That, in the third week of January 2004 at about 2.00 p.m, the appellant went to the Company of the complainant and introduced himself as an Officer in the Encroachment Department, Municipal Corporation of Greater Mumbai, "L" ward, Kurla (West). The appellant asked the complainant whether the complainant had taken permission of the Municipal Corporation for constructing the loft which was in the premises of the complainant's company. The complainant said that he had not taken any such permission whereupon the appellant gave his mobile telephone number to the complainant and asked him to meet the appellant. That, on 5th February 2007, the appellant

contacted the complainant on mobile telephone and informed him that he would be coming to meet the complainant in his Company in the evening. Accordingly, the appellant went to the Company of the complainant in the evening and told the complainant that the loft in the Company premises was illegal, and that it would be demolished. The appellant discussed the matter with the complainant and demanded an illegal gratification of Rs.60,000/- as a consideration for not taking the action of demolition of the said loft. The complainant expressed his inability to pay that much amount whereupon the appellant asked the complainant to consider about the quantum of the illegal gratification and meet him in his office on the next day. The complainant had no desire to pay any illegal gratification or bribe to the appellant, and as such, he reported the matter to the Anti Corruption Bureau (ACB) on 6th February 2007 by giving a complaint in writing. This complaint was verified in the presence of two panchas and in the verification, it became clear that the appellant had demanded an amount of Rs.45,000/- as and by way of bribe from the complainant and had agreed to accept an amount of Rs.15,000/- therefrom on 7th February 2007; and as such a crime vide C.R.No.12/07 was registered. On 7th February 2007 at about 8.35 p.m, the appellant was apprehended red-handed after he had

accepted the tainted amount near the counter of a store near Mahim Railway Station. Traces of *Anthracin* powder, which was used for laying the trap, were noticed on the fingers and the pant pocket of the appellant. Further investigation into the matter was carried out and record of the conversation between the complainant and the accused which had been recorded earlier, was forwarded to the FSL at Kalina. On receipt of the report about the identity of the voices in question, a charge-sheet alleging commission of the aforesaid offences was filed against the appellant who, as aforesaid, was tried, convicted and sentenced by the learned Special Judge.

3 The prosecution examined four witnesses during the trial. The first one is the complainant himself and the second is Ajay Sarolkar, a panch. The third witness Jayraj Phatak is the person who had accorded sanction to prosecute the appellant under the provisions of Section 19 of the P.C. Act. The fourth and the last witness for the prosecution is Rajendra Jadhav, the trap laying and Investigating Officer. The appellant did not examine himself as a witness. He, however, examined one Nayan Pumbhadiya as a witness in his defence.

4 I have heard Mr.S.R.Chitnis, learned Senior Advocate with Mrs.Vrishali Raje, Advocate for the appellant. I have heard Mr.V.B.Konde-Deshmukh, learned APP for the State. I have carefully gone through the record of the case. I have carefully gone through the entire evidence that was adduced during the trial. I have also examined the impugned judgment carefully.

5 Mr.Chitnis, the learned Senior Advocate for the appellant contended that the order of conviction, as recorded by the learned Special Judge, is not in accordance with law. He submitted that the prosecution case was suffering from a number of serious infirmities, and was unbelievable in itself. He submitted, firstly, that the appellant was working as a Security Officer in "L" Ward, and had nothing to do with the demolition of illegal structures. He also submitted that the premises of the complainant were not falling within "L" ward. He also submitted that the sanction accorded for the prosecution of the appellant was bad-in-law, and it suffered from non-application of mind. Over and above, he contended that the falsity of the case of the prosecution was established by the fact that the premises in which the complainant claimed he was running a garment factory, did

not exist at all, and that this is amply proved from the documents obtained by the appellant under the Right to Information Act. The learned APP, on the other hand, contended that in this case, the acceptance of illegal gratification by the appellant was proved beyond reasonable doubt. That, based on the evidence of acceptance of the bribe amount, the learned Special Judge has properly concluded that the appellant was guilty of the offences in question, and that as such, the order of conviction and the sentences imposed upon the appellant, are proper and legal, needing no interference.

6 According to the complainant, the appellant visited his premises situate at Unit IV, Star Delta Industrial Estate, Telephone Exchange Lane, Andheri (East), sometime before February 2007 and introduced himself as a Vigilance Officer from the BMC, Kurla "L" Ward. The complainant is categorical that he did not know the appellant till then.

7 The complainant further stated that it is at that time that the appellant informed the complainant that the loft in his factory was illegal, and that the appellant would have to demolish the same. According to the complainant, at that time, the

appellant said that if the demolition was to be prevented, the complainant would have to pay money to the appellant. It is in this meeting that the appellant took the mobile telephone number of the complainant, and gave his to the complainant. The complainant also said that initially the appellant demanded Rs.75,000/- from him, and when the complainant said that he was not in a position to pay such huge amount, the appellant again came to him after two days and demanded an amount of minimum Rs.60,000/-. In this meeting, the complainant told the appellant that he was not in a position to pay the entire amount in one stretch, and that he would pay it in instalments. **It is on the next day, which the complainant remembers to be a Tuesday, that the complainant went to the office of the ACB. Thus, it appears that the demand of Rs.60,000/- was made by the appellant on a day prior to lodging his complaint with the ACB.** Though the complainant has not given the dates of the happenings, since, admittedly, the matter was for the first time reported by him to the ACB on 6th February 2007, the happenings i.e. of the appellant demanding a minimum amount of Rs.60,000/- as and by way of bribe, and the complainant saying that he would pay the same in instalments, had, clearly, taken place on 5th February 2007.

8 It is the case of the prosecution that the verification of the alleged demand was made after the matter was reported by the complainant to the ACB. It is well settled that the demand of gratification is the foundation of the trap cases. The position is so well settled that no further discussion on this aspect is necessary, for the present. What is significant, however, is that according to the prosecution, a trap was laid only after verifying the demand of illegal gratification.

9 It would be necessary to first examine what is the evidence with respect to the demand of gratification and incidentally, of the verification of such demand.

10 In this case, what the complainant initially reported to the ACB was on 6th February 2007 and it was recorded on the same day. This record (Exhibit-13A) was produced before the trial Court. However, this was not treated as the First Information Report; and the statement of the complainant recorded after the alleged verification of the demand which was made in the ACB Office on 7th February 2007, was treated as the First Information Report (Exhibit-13). *Now, in none of these documents, there is a*

mention of the initial demand of **Rs.75,000/-** as per the complainant's version in his evidence. In his initial complaint (Exhibit-13A) and also in the so-called First Information Report (Exhibit-13), the complainant spoke only of a demand of **Rs.60,000/-**. The complainant was questioned in the cross-examination in that regard, and he agreed that he did not mention about the demand of Rs.75,000/- either on 6th February 2007 when the complaint was recorded, or on 7th February 2007 when the so-called FIR was recorded. Why there should be a variation in the amount of demand in the versions of the complainant given on different occasions, has not been explained, and is difficult to understand.

11 Anyway, the evidence with respect to the verification of the alleged demand may now be examined. This verification was undertaken by the Investigating Officer Jadhav (PW 4) immediately on 6th February 2007 itself. He handed over a micro tape-recorder to the complainant and explained to him about its operation and use. This verification was to be done by going to the "L" Ward office at Kurla of the Municipal Corporation and by the complainant entering into a conversation with the appellant. Going by the complainant's version, he, panchas and Inspector

Jadhav (PW 4), all had gone to the “L” ward office, but thereafter, the complainant alone was asked to go and meet the appellant. The complainant did meet the appellant, *but this time the appellant did not speak anything about the money and interestingly, he put the same in writing by using a pencil and the small piece of paper and then threw the same in dustbin.* Thus, according to the complainant, the demand was made by the appellant by writing it on an piece of paper and not by words of mouth, and as such, could not be recorded in the tape-recorder. Interestingly, the complainant also says that the appellant asked him to pay first instalment of Rs.15,000/-, but whether this was also indicated by the appellant by writing, is not clear. *One aspect, however, is clear and it is that the recording of the conversation could not prove the demand made by the appellant.* The complainant does not expressly state so, but there is no dispute on this and panch Sarolkar (PW 1) and IO Jadhav (PW 4), both stated about failure to get the allegation of demand verified, on 6th February 2007.

12 It is worth noticing here that according to the complainant, he alone was asked to go and meet the appellant, and the panch was asked to wait outside. According to panch Sarolkar also, the complainant alone went inside the office and

met the appellant, and that the complainant came back after about an hour. *Interestingly, PI Jadhav (PW 4) claims that he had instructed the panch also to accompany the complainant and to go inside the office of the appellant, and hear the conversation that would take place between the complainant and the appellant. He also claims that the complainant and the panch both had gone inside the Municipal Corporation office and had come back after some time. Anyway, since admittedly, the recorded conversation did not reveal any demand made by the appellant, and as the verification failed, there is no point in highlighting this discrepancy in the prosecution case.*

13 The story goes that on the next date, *again* an attempt to verify the allegation of the demand was made. This time the complainant spoke to the appellant on phone as per the instructions of PI Jadhav, but initially the appellant did not answer the call. According to the complainant, it was the appellant who later i.e. at about 2.00 p.m – 3.00 p.m called the complainant, and the recording of the telephone calls was done at that time in order to verify the demand of illegal gratification. The mobile telephone of the complainant on which the appellant had called was to be on *speaker mode* so that the panchas and the IO would be able to hear

the same. It is the case of the prosecution that, it is during this conversation that, 'that a demand of illegal gratification had been made by the appellant', was got confirmed. It is during this conversation that the place where the bribe amount i.e. the first instalment thereof in the sum of Rs.15,000/- was to be paid, was said to have been fixed as Mahim Railway Station, near ticket counter; and the time was fixed as on the same day, at about 7.00 p.m.

14 After getting confirmation of the demand of bribe in this manner that the FIR was recorded and immediately, a trap was arranged. The conversation that took place between the complainant and the appellant was also recorded.

15 Though the complainant, panch Sarolkar and IO Jadhav, all claim that 'from the conversation that took place between the complainant and the appellant over telephone on 7th February 2007, the verification of the demand made by the appellant was done', I am unable to hold the evidence in that regard satisfactory.

16 In this regard, it may be observed record of the conversation that took place between the appellant and the complainant over telephone, – on the basis of which the Investigating Officer arrived at a satisfaction that indeed there had been a demand of illegal gratification by the appellant – was not given in evidence, marked and exhibited. It was necessary for the prosecution to have got prepared a transcript of the recorded conversation and exhibited the record of the conversation as well as the transcript thereof, duly prepared and proved. When such record was made and *could have* been produced, the prosecution is content with the oral evidence of the complainant, the panch and the Investigating Officer to give the account of the conversation. *When the conversation itself was available in the form of a record thereof – specially made to use it in evidence – the question that would arise is as to why no attempt to prove the conversation by tendering the same in evidence along with a transcript, was made.*

17 Anyway, the conversation is reflected in the verification panchnama (Exhibit-17). It must be mentioned here that the learned counsel for the appellant contended that the recorded conversation had not been satisfactorily proved, though it was played over in the Court during the trial. A number of

contentions in that regard were raised before the trial Court, but in the view that I am taking, it is not necessary to go into that aspect of the matter. Without going into the question as to whether the conversation was satisfactorily proved, and whether the transcript thereof as given in the verification panchnama, is accurate – and assuming/accepting it to be so – I have gone through the record of the conversation reflected in the verification panchnama (Exhibit 17); and I do not think that this record – the prosecution's own one – advances the prosecution case in any manner.

18 Though the Investigating Officer and the panchas claim that they were satisfied from this conversation, that indeed there had been a 'demand' from the appellant, it is not possible to hold that from this conversation, anyone would have the satisfaction of having verified the demand of illegal gratification. In fact, in this conversation also, the appellant is never seen touching the subject of any amount to be paid to him. What is seen is that the complainant is saying 'as to how much *total* was told by him (appellant) to the complainant on the previous day'. The conversation is not fully or properly audible as per the record – transcript – itself. The complainant is seen saying something

about 'total' and the appellant asking 'whether the total was in his own or of the others', and the complainant replying that it was 'his only.' There is reference to the figure '45' (and not 'sixty' or 'sixty thousand'); but from the record of conversation, as is found in the verification panchnama, it is impossible to hold that the demand of gratification which could not earlier be verified, stood verified. *Apparently, the trap was decided to be laid without being satisfied about this aspect and without waiting any further, as previously also such an attempt i.e. to make a verification of the demand, had failed.*

19 There is also some doubt about the likelihood of things having happened in the manner in which the complainant says they happened. It is because on the previous day when the complainant had met the appellant – with full preparation to record the conversation secretly – the appellant did make **no demand** of any gratification orally and was too cautious to make a demand only by writing it by a pencil on a small paper and then, throwing away the paper in the dust-bin. The same complainant, however, on the next day, spoke about the amount over telephone which is not consistent with the cautious nature of the appellant, as reflected from his behaviour on the previous day, and the precautions he had been taking in that regard.

20 That, instead of producing the conversation and tendering it in evidence with a duly proved transcript thereof, the prosecution should rely on the oral account of the conversation given by the complainant, the panch and the Investigating Officer is a suspicious feature of the case and the least that can be said is that the account of the conversation given by these witnesses and their claim that the conversation proved the demand of bribe made by the appellant, cannot be safely believed.

21 In my opinion, with respect of the initial demand, there is hardly any satisfactory evidence. In the first place, there is a variation in the amount of initial demand i.e. whether it was Rs.75,000/- or Rs.60,000/-, and there is a reason to suspect that this variation occurs because of the confusion in the mind of the complainant who wanted to stick to a version that the initial demand was later on reduced by Rs.15,000/- by the appellant. Anyway, though this by itself may not be given much importance, it is a fact that *the demand could not be verified on 6th February 2007*. Whether the complainant was alone at that time or was accompanied by panch Sarolkar, is also not clear as there are two different versions in that regard. Moreover, the record of the

conversation by which the Investigating Officer was 'satisfied' about a demand of illegal gratification indeed having been made by the appellant and which conversation served as verification of the demand, was not at all produced before the Court, and only on oral account thereof was given by the witnesses. Lastly, a doubt can reasonably be entertained as to whether a cautious complainant – as he must be held to be from the fact that he avoided to utter the words and make demand on 6th February 2007 – would rashly make a demand while speaking on telephone on the very next day when he would not know from where the complainant was speaking, and whether there was anybody with him who would be able to hear the conversation.

22 We may now examine the evidence with respect to the acceptance of the tainted amount by the appellant. This was accepted by the appellant on 7th February 2007, in a shop / stall near Mahim Railway Station, at about 8.35 p.m.

23 As to when and in what manner, the place, where the amount was to be handed over to the appellant was fixed, and how much was that amount, is not very clear. According to the complainant, this was fixed on 7th February 2007, when the

complainant was in the office of the Anti Corruption Bureau and when the appellant had called him at about 2 to 3 p.m. This conversation was heard by the Investigating Officer and the panchas, on the speaker of the mobile telephone instrument of the complainant. It is, during this telephonic conversation, that the appellant is supposed to have asked the complainant as to when he would pay Rs.15,000/- to him, and further that, the appellant would meet the complainant at Mahim Railway Station near the ticket counter, in the evening, at about 7.00 p.m. According to the complainant, the conversation was also to the effect that the complainant should pay first installment of the bribe amount i.e. of Rs.15,000/- to the appellant. Interestingly, however, the account of the conversation, that is reflected in the verification panchnama dated 7th February 2007, does not disclose this. It has already been observed that no efforts were made by the prosecution to prove the record of the conversation and it was content with the witnesses giving an oral account thereof, inspite of availability of the tape recorded conversation. Even if this factor, which is clearly adverse to the prosecution, is kept aside, and reliance is placed on the transcript of the conversation as is reflected in the verification panchnama (Exhibit 17) dated 7th February 2007, still, the same is not consistent with the claim of

the complainant and the case of the prosecution. This conversation, as has been mentioned earlier, does not speak about any reduction of the bribe amount from Rs.60,000/- to Rs.45,000/- (which is the case of the complainant). It also does not refer to any installment of Rs.15,000/- (though there is a vague reference to '15-20') and in any case, there is absolutely no reference to the place of meeting as Mahim Railway Station, where the amount of bribe was to be accepted. Infact, the claim of the prosecution witnesses, who claim that it was decided between the complainant and the appellant that the first installment of the amount of bribe was to be accepted by the appellant on *7th February 2007 itself* in the late evening at Mahim Railway Station, is inconsistent with the recitals of the verification panchnama (Exhibit 17), *as per which, the amount was to be accepted on 7th February 2007 or 8th February 2007.*

24 It is indeed mysterious that the recorded conversation should not show that the appellant had agreed to accept the bribe amount near Mahim Railway station on 7th February 2007, but that, the complainant and the prosecution witnesses should state so. Though it is possible to reason that subsequent to the verification panchnama, the complainant and the appellant might

have agreed to meet near Mahim Railway Station, where the amount of bribe would be paid; but the question that arises in that case would be as to why such conversation, if any, was not recorded. This, therefore, casts a doubt on the reliability of the complainant and the panch, as well as the Investigating Officer.

25 We may now examine the evidence as to what happened after the complainant and the appellant had agreed to meet at Mahim Railway Station near ticket counter. The complainant, the police party and the panchas went near Mahim Railway Station and were waiting there. The appellant did not come at the appointed time, i.e. between 7.00 to 7.30 p.m. On the instructions of the Investigating Officer, the complainant then called the appellant on his mobile telephone, which was at about 8 to 8.15 p.m., when the appellant asked him to wait near the ticket counter and said that he would be coming in 10 to 15 minutes. The appellant came at about 8.30 p.m. from Platform No.1. He came towards the complainant and asked the complainant to proceed across Tulsi Pipe Road. Accordingly, the complainant and the appellant walked together. Arrangements had been made for tape recording the conversation and the complainant had put the tape recorder on. The complainant and the appellant then stopped

at a shop where cold drinks and other articles were sold. It is, at that time, that the appellant demanded an amount of Rs.15,000/-, whereupon, the complainant asked him whether after the payment of the bribe amount, the demolition of the loft would not take place. The complainant then assured that, after payment of bribe the demolition would not take place and also insisted that the complainant would have to pay the balance amount of Rs.30,000/-. It is, thereafter, that the complainant took out the bribe amount of Rs.15,000/- from his right hand shirt pocket by using his right hand and handed it over to the appellant, who accepted the same by his right hand and kept it in his right side pant pocket. The complainant then gave the pre-determined signal of moving his left hand over his head, and thereafter the members of the raiding party apprehended the appellant. *The tape recorder was put off after his arrest.* The evidence shows that the complainant and the appellant, both, were standing near the counter of the said shop / stall were holding cold drink bottles in their respective hands, and both of them were actually consuming cold drink at that time.

Like the previous conversations, a transcript of this conversation forms a part of the trap panchnama (Exhibit 20). As aforesaid, adverse inference against the prosecution can certainly be drawn on account of its failure to produce the record of conversation, but even if that aspect is kept aside, and a reference is made to the transcription of the conversation as reflected in the trap panchnama Exhibit 20, *it belies the version of the complainant. This transcription nowhere reflects any demand of bribe. In fact, the IO has categorically admitted in the cross-examination that in the record of this conversation which was heard by him, there was no demand of bribe made by the appellant from the complainant.*

27 There is also no uniformity in the versions as to what happened after the apprehension of the appellant. According to the complainant, his search was taken on the spot itself and tainted currency notes were recovered from him on the spot itself. According to the Investigating Officer, however, the appellant was taken to Mahim Police Station and then his personal search was taken, during which, the tainted amount came to be recovered. Interestingly, this, the Investigating Officer stated only after referring to the panchnama, which he was allowed to refer 'to refresh his memory'. Thus, with respect to the acceptance of the

bribe, there are two significant aspects. The first is, that the conversation that took place just before the acceptance is not attempted to be supported by the recording, which the prosecution claimed to be having with it. This is the least that can be said, even if that the prosecution's own record of the conversation not only does not support the account thereof given by the complainant, but totally destroys it, is ignored. The second aspect is, that there is a glaring infirmity about the place where the personal search of the appellant was taken.

28 Apart from this, there were two other glaring aspects of the matter which creates a serious doubt about the truth of the prosecution case. The learned counsel for the appellant contended before this Court – and it was also contended before the trial Court – *that the complainant was not having any business at the address given by him* – i.e. in the premises at Unit-IV, Star Delta Industrial Estate, Saki Naka Industrial Lane. It was specifically contended that the appellant had obtained information under the Right to Information Act, and it was revealed that there was no establishment by name “Four Seasons Garments” and there was no “Star Delta Industrial Estate” at the place mentioned by the complainant. In this regard, it is quite significant that the

complainant himself in the FIR has said that he had not taken any licences or permissions from any Government Department. The FIR initially itself mentions the address of the complainant's business premises, and immediately adds that 'for his business, he had not taken any licence/permits from any Government departments'. *The anxiety of the complainant to disclose this information*, before going further with his complaint and in the introductory part itself, is indeed curious, but the matter be left at that. What, however, is more important and renders the complainant a thoroughly unreliable witness is the fact that the complainant had previous acquaintance with the appellant, and that the complainant tried to suppress it. The evidence of Nayan Pumbhadiya who was examined as a witness for the defence, clearly shows that the complainant and the appellant knew each other since the year 2006. The evidence of this witness has not been challenged at all, except putting a bare suggestion to him that the appellant did not know the complainant, which suggestion has been plainly denied by this witness. It cannot, at all be doubted that the appellant and the complainant knew each other and had been introduced by the said Pumbhadiya in the "L" Ward office of the Municipal Corporation. The fact that the complainant tried to suppress this and claimed that he came to know the appellant only

when he had visited the complainant's business premises and had introduced himself to the complainant, is extremely suspicious.

Interestingly, another aspect of the evidence of the defence witness Pumbhadiya – which was not referred to by either parties, but which appears to be significant to me – is, that this witness said that he came to know the complainant when he had seen him with one Anil Jain who was known to Pumbhadiya, and who was in Garment business. The evidence of Pumbhadiya also shows that Anil Jain used to visit “L” Ward in connection with some problem of his structure. There is not even a suggestion that the complainant did not know any Anil Jain.

30 In my opinion, the following facts :-

- (i) That, the complainant tried to suppress the fact that he knew the complainant since prior to February 2007;
- (ii) That, he tried to mislead everyone by stating that he came to know the appellant only when the appellant visited his premises and introduced himself;
- (iii) That the complainant, in the introductory part of the FIR itself, after mentioning his name,

thought it necessary to mention that he had no licences in respect of the business;

(iv) That, the complainant had been seen with one Anil Jain who was involved in the Garments business, and that the said Jain used to visit “L” ward office of the Municipal Corporation in connection with some problem of the structure;

indicate that the truth of the matter was quite different from that projected by the complainant.

31 In spite of these weaknesses in the case of the prosecution, the learned Special Judge has held the appellant guilty of the alleged offences. I have carefully examined the impugned judgment, and I find that the only basis on which the appellant came to be convicted is that, according to learned Special Judge, it was satisfactorily proved that there was '**transfer of amount**' (a phrase repeatedly used by the learned Judge) from the complainant to the appellant. By emphasizing on this “transfer of amount”, the learned Judge held that the presumption as laid down in Section 20 of the P.C. Act was attracted to facts of the case and that, therefore, by virtue of that presumption, that the appellant had committed the said offences, stood proved. The

learned Judge in his judgment, noted the contentions advanced by the learned counsel for the appellant in depth, and also noted the authoritative pronouncements of the Apex Court on which reliance had been placed by the learned counsel for the appellant. After doing this, instead of dealing with those contentions/ arguments, the learned Judge straight away came to the aspect of acceptance and recovery of amount from the appellant. He observed :-

“I will straight away discuss the issue about the acceptance and recovery of amount from accused, and further his claim that the amount was thrust in his pant pocket” (para 16)

The learned Judge further observed that :

“Neither though the conversation between the complainant and accused is not heard by other members of raiding party, everybody therein witnessed the transfer of amount from complainant to accused” (para 16)

32 After noticing some deficiencies in the evidence, the learned Judge observed that :

“In spite of these deficiencies, the evidence of the Investigating Officer, this corroborates the evidence of the complainant that the amount was so

transferred in the manner stated by the complainant. (para 16)

33 It appears from the impugned judgment and the conclusions arrived at by the learned Special Judge that he felt satisfied about the evidence of the initial demand of bribe as allegedly made by the appellant, only on the strength of evidence of the happenings of 7th February 2007 – i.e. after the trap had been laid – to hold the prosecution case as proved.

34 The learned Judge has not properly comprehended the concept of 'demand' and 'acceptance'. He has misconstrued the provisions of Section 20 of the P.C. Act. Moreover, the appreciation of evidence, as done by him, is also not in accordance with the well settled parameters. Thus, his conclusion that 'transfer of amount' was satisfactorily proved does not appear to be proper; and further his opinion that from the **transfer of amount** (by itself) the proof of the demand of bribe can be gathered' is also incorrect.

35 The learned Judge was in error in holding the prosecution case as proved only on the basis of the proof of “transfer of amount” as repeatedly held by him in the impugned

judgment. It may only be added that apart from the fact that only on the basis of such “transfer of amount”, he could not have held the case as 'proved', what needs to be emphasized is that even the evidence of the 'transfer of amount' could not have been treated as satisfactory by isolating it from the evidence with respect to other happenings. *When the evidence of demand which is the foundation of the prosecution case – or every trap case for that matter – had been totally shaken, the learned Judge ought not to have felt so assured about the truth and reliability of the evidence regarding 'transfer of amount'.* In this context, it would be appropriate to reproduce here the following observations made by Their Lordships of the Supreme Court of India in the case of **G.V. Nanjundiah Vs. State (Delhi Administration)** ¹

“The question as to the handing over of any bribe and recovery of the same from the accused should be considered along with other material circumstances one of which is the question whether any demand was at all made by the appellant for the bribe. When it is found that no such demand was made by the accused and the prosecution has given a false story in that regard, the Court will view the allegation of payment of the bribe to and recovery of the same from the accused with suspicion”.

(para 25 of the reported Judgment)

¹ AIR 1987 SC 2402

36 There is no change in the well accepted proposition that if the evidence of initial demand is not acceptable, the entire evidence obtained by laying a trap, becomes suspect. The evidence of recovery of amount from an accused, when evidence of a previous demand is lacking, or is not satisfactory, would be totally insufficient to hold as accused guilty of having committed an offence punishable under section 7 and/or section 13(2) r/w section 13(1)(d) of the P.C. Act. If at all any case law is still required to be quoted for this well settled and logical proposition, a reference can be made to a recent decision of the Supreme Court of India.

37 In **Krishan Chander Vs. State of Delhi** (Criminal Appeal No.14 of 2016) (decided on 6th January 2016), Their Lordships reiterated the legal position by observing :

“It is well settled position of law that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C. Act.

Their Lordships referred to a previous decision of the Supreme Court of India in the case of **B. Jayaraj Vs. State of Andhra Pradesh**, ¹ and quoted the following observations therefrom.

¹ 2014 Cr.L.J.2433

Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is *sine qua non* to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court.

(Emphasis supplied)

38 In the instant case, the complainant tried to suppress the prior acquaintance with the appellant, which apart from being a highly suspicious feature in itself, clearly projects the complainant as an unreliable witness. Moreover, there is a reference to one Anil Jain and the complainant's acquaintance with him, which the complainant did not dispute or challenge. The recorded conversations, as reflected from the transcripts found in the prosecution's own record, do not support the case of any demand; and there is not only no demand, but there is not even any reference to any illegal construction or loft. The appellant was a security officer and not an officer concerned with demolition of unauthorized structures. When such was the

position, the possibility of the complainant having tricked the appellant in accepting the money, or the money being given not in any connection with any official act or as a motive or reward for doing or forbearing to do any such act, cannot be ruled out. The words “accepted” or “obtained” occurring in section 20 of the P.C. Act contemplate a deliberate and voluntary act on the part of an accused. If an accused is tricked into taking the amount, it can hardly be treated as an acceptance so as to attract the presumption laid down in Section 20 of the P.C. Act.

39 The appreciation of evidence as done by the learned Special Judge is not proper. He has proceeded as if the appellant was already guilty and put a reverse burden of proving his innocence on the appellant. In this case, panch Sarolkar (PW 2) had previously also acted as a panch in trap cases on two occasions. Thus, he was acquainted with the police officers. His evidence, therefore, needed to be appreciated cautiously by taking this into consideration, but the Special Judge has accepted his evidence as true and reliable by holding him to be a respectable person only by virtue of his 'being a public servant'. That, the panch had acted twice previously as such, was pointed out to the learned Judge. The decision of the Supreme Court of

India, in the case of **G.V.Nanjundiah Vs. State (Delhi Administration)** (supra) was also pointed out to him, but he tried to wriggle out of it by referring to a decision delivered by the Bombay High Court. What he further observed is indeed shocking. He observed : In the present case, “there should not be any doubt that the panch witness is a respectable person *being a public servant*”. All that can be said about these observations is that by the present logic, the appellant also should be held as a respectable person 'being a public servant', (and therefore, not likely to take bribe).

40 That there was a case for drawing the presumption under section 20 of the P.C. Act because of the “transfer of amount”, and that the same would automatically establish all the ingredients of the alleged offences, as believed and held by the learned Special Judge, is contrary to law. If such a view is accepted, it would render all the law emphasizing on the necessity of demand thoroughly worthless and irrelevant. It is a fundamental principle of the appreciation of evidence that *in every case, the evidence has to be seen as a whole*. When there are a number of infirmities in the prosecution case with respect to several material aspects, it would be highly improper to easily accept the evidence on a particular point as absolutely reliable and

clinging. In this case, obviously, the evidence of demand was not satisfactory and, therefore, instead of analyzing that evidence, the learned Judge has started discussing the evidence from the so-called acceptance of gratification by the appellant. In doing so, he ignored all the doubtful aspects of the prosecution case.

41 This was a case where there was a serious doubt about the truth of the prosecution case. This was a case where the appellant should have been acquitted.

42 Appeal is allowed.

43 The impugned judgment and order of conviction is set aside.

44 The appellant is acquitted.

45 His bail bonds are discharged.

46 Fine, if paid, be refunded to him.

(ABHAY M. THIPSAY, J)