

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

Date of Decision: May 06, 2016

+ CRL.A. 76/2010

MADAN GOPAL SINGHAL

..... Appellant

Through Mr Sudershan Rajan, Mr
Mayank Jain and Mr Madhur
Jain, Advocates

versus

STATE

..... Respondent

Through Mr Hirein Sharma, Additional
Public Prosecutor

AND

+ CRL.A. 75/2010

NARENDER KUMAR

..... Appellant

Through Mr M.N. Dudeja and Mr Rajiv
Ranjan, Advocates

versus

STATE

..... Respondent

Through Mr Hirein Sharma, Additional
Public Prosecutor

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

: SUNITA GUPTA, J.

1. These criminal appeals are directed against the impugned judgment dated 22nd December, 2009 in CC No.115/2009 arising out of FIR 43/99 u/s 7, 8 and 13 of Prevention of Corruption Act (hereinafter referred to as "the Act") registered at PS AC Branch

passed by Special Judge (PC Act)-06, Tis Hazari Delhi vide which Madan Gopal Singhal (A1) was convicted for offence under Section 7 r/w Section 13(1)(d) punishable u/s 13(2) of the Act and Narender Kumar (A2) for offence under Section 8 of the Act and vide order dated 24.12.2009 sentenced A1 to undergo rigorous imprisonment for a period of one year with fine of Rs.5000/- for the offence punishable under Section 7 of the Act in default to undergo simple imprisonment for a period of one month. For the offence punishable under Section 13(1)(d) r/w Section 13(2) of the Act, he was sentenced to undergo rigorous imprisonment for a period of one year with fine of Rs.5000/- in default to undergo simple imprisonment for one month. Both the sentences were to run concurrently.

2. A2 was sentenced to undergo rigorous imprisonment for a period of six months together with fine of Rs.1000/- in default to undergo simple imprisonment for one month.

3. Aggrieved by the decision of the learned Special Judge, separate appeals bearing Crl.A.Nos.75/2010 and 76/2010 have been filed by the appellants. Since both the appeals arise out of common judgment. Hence, they are taken up together.

4. Shorn of unnecessary details, the prosecution version as unfolded during the trial is as follows:

4.1 Nanhe Ram PW3 is the defecto complainant. On 22.11.1999 he applied for installation of electricity meter at his house bearing premises No. I-5/38, Sector 16, Rohini in the

name of his wife. A sum of Rs.3445/- was deposited by him. According to him, for early installation of meter, a sum of Rs.2000/- was demanded by A1.

4.2 He approached the office of Anti Corruption Branch on 23.11.1999 and made a written complaint regarding the demand of bribe by A1 from him. The said written complaint was recorded by Raghubir Singh Yadav (PW13) in the presence of Upender Kumar (PW6).

4.3 Complainant Nanhe Ram took with him four government currency notes (for short “the GC notes”) in the denomination of Rs.500 each and handed over the same to Inspector Raghubir Singh Yadav (PW13) who noted down the serial numbers of the said GC notes. Thereafter, phenolphthalein powder was applied to the said GC notes and recorded in the pre-raid proceedings and its effect was demonstrated. The tainted GC notes were given to the complainant Nanhe Ram, who kept the same in the left pocket of his shirt.

4.4 As per the instructions, panch witness Upender Kumar (PW6) was directed to remain close to complainant Nanhe Ram to overhear the conversation between the complainant and the appellant. He was further instructed to give a signal to the raiding party by hurling his hand over his head when bribe amount had actually been given by the complainant Nanhe Ram.

4.5 At about 1.00 pm, the complainant Nanhe Ram, Panch witness Upender, Inspector Raghubir Singh Yadav (PW13), Inspector Suresh Chand Sharma (PW7) alongwith other members of the raiding party left the office for conducting raid at the residence of complainant situated at Sector 6, Rohini, Delhi.

4.6 At about 3 pm, A2 came to the house of complainant on a scooter and went inside the house of the complainant. He informed that work of electric meter has been completed and A1 had sent him to collect money. Complainant asked him to reduce the amount on which he talked to A1 who did not agree to reduce the amount. Complainant took out the tainted GC notes and gave them to A2 who counted the same with both his hands and kept the same in the right side pocket of his pant. Soon after the said transaction, Panch witness gave the predetermined signal to the raiding team which came there.

4.7 Panch witness informed the raiding team regarding the incident and raid officer disclosed his identity as Inspector of Anti Corruption Branch. On instructions of raid officer, Panch witness recovered tainted GC notes from right side pocket of pant of A2. The serial number of the recorded GC notes were matched with those noted in pre-raid proceedings. The wash of right and left hand of A2 as well as wash of right inner pocket of pant was taken in colourless solution of Sodium Carbonate

which turned pink. Thereafter A2 was arrested. He led the raiding party to shop No. F 153, Sector 16, Rohini from where A1 was arrested. FIR was registered against the appellants for offences under Section 7, 8 and 13 of the Act.

4.8 Prosecution examined as many as 14 witnesses to establish their guilt. In their statement u/s 313 Cr.P.C., the appellants denied the case of prosecution. A-1 took the plea that PW3 is a disgruntle person having criminal background. He was in the habit of stealing electricity. In order to save himself from any legal action, he in connivance with RO, falsely implicated him in this case. PW6-Upender Kumar is a stock witness of AC Branch and in order to save himself from any departmental action which could be initiated against him if he did not depose as per the statement recorded by the AC Branch, he falsely deposed against him. He further took the plea that during those days, the DESU staff was conducting raids in the area against electricity thefts and the persons found committing electricity thefts were prosecuted. In order to save himself from any legal action, which may be taken by DESU, complainant falsely implicated him in this case. He denied having met the complainant at any point of time. He also denied that A-2 was known to him from earlier. He also alleged that no such conversation on telephone ever took place.

4.9 A2 also pleaded his innocence. According to him, he was working with contractor Krishan Kumar for laying the cable and electricity wiring in various properties. Krishan Kumar has sent him for doing wiring and cable work in the house of the complainant. On completion of work, service charges were to be paid to him by the complainant. Complainant called him on 23rd November, 1999 for payment of service charges. As such, when he visited his residence on 23rd November, 1999, the complainant paid him Rs.2000/- as service charges but thereafter, some person in plain clothes apprehended him on the allegation that he had received the bribe amount. He explained to them that he had received the amount against service charges but they did not pay any heed to it and falsely implicated him in this case. He also pleaded that he did not know any junior engineer of DVB by the name of Madan Gopal Singhal.

4.10 The accused examined DW1-Sh. Krishan Kumar in support of his defence who deposed that on 16th November, 1999, one Nanhe Ram, resident of I-5/38, Sector-16, Rohini contacted him for installation of wiring and other electricity connection including laying of cable at his house. The contract was settled at Rs.2,000/-. He sent one of his workers Narender Kumar to execute the work at the house of Nanhe Ram. The work was completed on 20th November, 1999. The complainant, however, did not pay the amount on that day and thereafter even on 21st November, 1999. On 23rd November,

1999, he again sent Narender Kumar to the house of the complainant for collecting the charges. In the evening, he came to know that complainant got Narender Kumar implicated in a false case.

5. After appreciation of the evidence and taking into consideration the submissions of the parties, the Trial Court by the impugned judgment held both of them perpetrators of the crime and sentenced them accordingly. Being aggrieved, they have preferred the appeals.

6. At the outset, the learned counsels for the appellants referred to the antecedents of the complainant for submitting that the complainant is a man of dubious character. As per his own admission, two criminal cases pertaining to PS Kamla Market and Desh Bandhu Gupta Road, regarding pick-pocketing has been registered against him. Moreover, he admitted that prior to applying for installation of electricity connection on 22nd November, 1999, he was not having any electricity connection and was using electricity illegally by installing wires with the poles unauthorizedly. Counsels submit that the dubious character of the complainant is relevant under Section 146 of the Evidence Act. In that view of the matter, the testimony of the complainant is required to be scrutinized with great care. Counsel further submits that A2 was not known to A1 from before. In fact A2 was an employee of Kishan Kumar. As per deposition of DW1 Krishan Kumar, on 16th November, 1991, the complainant contacted him for installation of wiring and other electricity connection including laying of cable at his house and the contract was settled for

Rs.2000/-. He had sent Narender Kumar-A2 to execute the work. The same was completed on 29th November, 1999, however, the payment was not made by the complainant. A2 was asked by the complainant to come on 21st November, 1999 to receive the payment, however, even on that day, payment was not made instead A2 was told that they were charging more money from him for doing the electricity work and he was again called on 23rd November, 1999 for collecting money. On 23rd November, 1999, A2 had gone to the house of the complainant for collecting Rs.2000/-. Later on he came to know that he has been implicated in a false case. Counsels submit that the defence version stands corroborated by the complainant as well as the Panch witness. Trial Court fell in error in observing that no reliance can be placed on the testimony of DW1 as no such suggestion was given to the prosecution witnesses. Counsel submits that mere non-mention of the name of Krishan Kumar, contractor does not mean that defence was not put to the complainant. Attention of the Court was drawn to the cross-examination of complainant where it was specifically put to the witness and he admitted that internal electric fittings and wiring was got done by him through private contractor, however, he denied the suggestion that cables were also installed by the private contractor or that Narender was working as electrician under that contractor. He admitted that when Narender-A2 came to his house on 23rd November, 1999, he told him that cable was not rightly installed to which he replied that it was rightly installed and there would be no problem. This fact has been admitted by the panch witness Upender Kumar as well. Under the circumstances, it is

submitted that the defence version stands proved from the prosecution witnesses. It was further submitted that it is undisputed that the meter was installed in the morning of 23rd November, 1999 and it is beyond imagination that if a sum of Rs.2000/- was demanded as bribe by A1 then the installation would be done without taking the demanded bribe. Moreover, in order to implicate the accused A1, there is a deliberate improvement in the testimony of the complainant by incorporating the story of a telephone call to A1 for reducing the amount. However, no call details have been seized. Reference was also made to the testimony of PW8, 9 and 10 according to which the meter in question was to be installed at the house of Murari Lal whose house was adjacent to the house of the complainant. The installation work is to be done by the labourers and PW12 admitted in cross-examination that the area inspector was to check on the next day whether installation of the meter has been done at the correct address or not, however, no such occasion arose for A1 to check the meter because on the same day he was arrested. Further, in order to show nexus between A1 and A2, the prosecution tried to show that A2 came on the scooter of A1. Reference was made to the personal search memo of A2 for submitting that although the scooter was seized but key of the scooter was not seized. In fact, according to A1, the scooter was seized from his house. Counsel further submits that the prosecution tried to show that A1 was arrested at the pointing out of A2 from Sector 16, Rohini from the office of PW11 Satish Kumar, however, this witness has not supported the case of prosecution. Moreover, it is the case of A1 that he was arrested from his house.

Counsel further submits that the entire raid proceedings are false as, as per Ex.PW3/G, the complainant had reached the office of ACB at 12:00 noon and the entire pre-raid proceedings were completed within one hour as the raiding party left the office of ACB at 1:00 pm. It is highly improbable to complete all such proceeding within a short period of one hour. Moreover, in order to establish the case against the appellants, it was incumbent upon the prosecution to prove that A1 demanded the illegal gratification and accepted the same. Mere demand or mere acceptance is not sufficient. Mere recovery of tainted money divorced from demand is also insufficient. Under the circumstances, the counsel submits that prosecution has miserably failed to bring home the guilt of the accused persons beyond reasonable doubt. The evidence was not scrutinized in correct perspective by the learned Additional Sessions Judge. The judgment being perverse deserves to be set aside.

7. Reliance was placed on *Virendranath vs. State of Maharashtra*, (1996) 11 SCC 688; *Om Prakash vs. State NCT of Delhi* CrI.A.765/2001, *UOI vs. Pumannu Biswas* (2005) 12 SCC 576, *V.Venkata Subbarao vs. State* (2006) 13 SCC 305, *State of UP vs. Babu Ram* (2004) 4 SCC 515, *Mahendra Singh Chotelal Bhorgad vs. State of Maharashtra & Ors.* (1998) 2 SCC 357.

8. Rebutting the submissions of the learned counsel for the appellants, learned Additional Public Prosecutor for the State submitted that the impugned judgment does not suffer from any

infirmity which calls for interference. No reliance can be placed on the testimony of DW1 Krishan Kumar who had no documentary proof to prove his version that Narender is his employee or that installation was done by him at the house of the complainant. On the other hand, ample evidence has come on record to prove that there was connivance between both the accused. That being so, they were rightly convicted by the learned Sessions Judge. The appeals being devoid of merits deserve to be dismissed.

9. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

10. Nanhe Ram (PW3) is the complainant and has deposed regarding applying for installation of electricity meter at his residence in the name of his wife Smt. Asha and deposit of Rs.3400/-. He further deposed that he was informed by A1 that the meter would be installed after one month, however, on his request that the same be installed at an early date, he demanded a sum of Rs.2000/- so that meter can be installed within two days. He told A1 to go ahead with the installation of the meter and that the amount would be paid thereafter. Thereafter no other talk took place between him and A1 at that time. He went to Anti-Corruption Branch and lodged the complaint Ex.PW3/A. Pre-raid proceedings were conducted at the office of Anti-Corruption Branch and then he along with raiding party and the panch witness came to his house. A2 came to his house and

informed him that he has been sent by A1 to collect Rs.2000/-. He requested him to reduce the amount as the same was on higher side as other persons of the locality got similar work done after paying only Rs.500/- to Rs.700/-. A2 asked him to talk to A1 on telephone and gave his telephone number. Thereafter, complainant talked to A1 and requested him to reduce the amount but A1 was not willing to accept less than Rs.2000/-. Thereafter, he gave Rs.2000/- to A2 who accepted the money with his right hand and kept the same in the right side pocket of his pant. After getting the pre-determined signal, the officials came inside his house and panch witness took search of A2 and recovered the tainted money thereafter, the post proceedings were conducted. He further deposed that A2 was arrested and at his instance A1 was arrested from Sector-16, Rohini.

11. Sh. Upender Kumar, PW6 is the panch witness. He has deposed about the lodging of complaint Ex.PW3/A by PW3 regarding demand of bribe of Rs.2000/- by official of Delhi Vidyut Board from the complainant for installation of electric meter at his house. He joined the pre-raid proceedings and thereafter accompanied the raiding party along with the complainant to the house of the complainant where A2 came and demanded the amount. On the asking of the complainant that the amount is very high and someone had paid less amount for that work, he asked him to talk to A1 on telephone. A conversation took place on telephone. Thereafter A2 told the complainant that A1 has refused to accept the amount less than Rs.2000/-, thereupon, the complainant gave the amount of Rs.2000/-

to A2. He gave signal to the raiding party. Thereafter, A2 was apprehended. On the asking of the raiding party, he took out the tainted money from the right side pocket of pant of A2. At the instance of A2, A1 was arrested from the office of one property dealer. The scooter of A2 was seized by the police on the spot vide seizure memo Ex.PW3/D.

12. PW7 Suresh Chand Sharma posted as Inspector in Anti-Corruption Branch on the relevant day, went along with raiding party to the house of the complainant. On being called by Inspector R.S. Yadav, he reached the house of the complainant, arrested A2 and then at his instance A1. He also carried out further proceedings of the case.

13. PW8-Sh.Devender Mohan Sharma, who was working as senior clerk in Commercial Section of DVB in District Rohini, Sector-3 at the relevant time, explained the procedure for installation of electricity connection. According to him whenever a request is received from the consumer along with documents, i.e., agreement form, test report, power of attorney/ownership proof/occupancy proof for installation of electricity connection, the matter is processed first by preparing a demand note whereby the consumer is asked to deposit the amount as per the demand note. Then the case is sent to AE who sanctions the electric connection which takes about 2-3 days then the file is sent to Zonal Engineer who sent the same to concerned JE. The JE draws electric meter from the store on the basis of the test report and after receiving this meter from the store, the JE installs the meter in the

premises for which the connection has been sanctioned. In the instant case, the consumer Smt.Asha, wife of Sh.Nanhe Ram submitted a request along with relevant documents on 22nd November, 1999 in district office of DVB, Sector-3, Rohini for installation of electricity connection. On the same day, a demand note was issued for Rs.3445/- and the amount was deposited by the applicant on 22nd November, 1999. The file remained in the Commercial Section of Rohini District, Sector 3 and Inspector S.C. Sharma collected the file from him on 26th November, 1999. The electric meter could not be installed in the premises of the applicant Smt. Asha because the file remained with him from 22nd November, 1999 to 26th November, 1999 and it could not be sent to AE (Power Supply) as the following day, i.e., 23rd November, 1999 was a holiday.

14. PW10-Sh. Panna Lal, who was working as Storekeeper in meter testing department, DVB deposed that 15 electricity meters were issued to M.G. Singhal, including meter No. E-99-30662 and no meter against the K No.137752 was issued to Mr.M.G. Singhal.

15. PW11-Satish Kumar was running his office under the name and style of K.S. Properties at F-6/153, Sector-16, Rohini, Delhi from whose office A1 is alleged to have been arrested, however, this witness has not supported the case of prosecution and has denied the arrest of A1 from his office. Despite cross-examination by learned APP, nothing favourable to the prosecution could be culled out.

16. PW12-S.S. Arora who was working as AE Zone-III, DVB, Rohini deposed that he inspected the site on 27th November, 1999 and found that meter No.E99-30662 was installed at property No.I-5/38, Sector-16, Rohini for which no case was received for installation of electricity connection in his office. He admitted in cross-examination that work of installation of meter was carried out by the labourers of DESU along with contractor at that time. Premises No.I-5/27 and I-5/36, Sector 16, Rohini were adjacent to each other. After the installation of the meter, the concerned Inspector used to visit the site on the next day to verify whether the meter has been installed at the correct premises or not. In the instant case, Mr. M.G. Singhal could not get the opportunity to examine the premises in order to verify whether the meter was installed at the correct place or not as he was trapped. He also admitted that at the relevant time, they were conducting series of raids in their zone to catch and trace the electricity theft cases and the persons who were found stealing electricity were booked for the offences and accordingly FIR used to be lodged at the concerned Police Station. Narender Kumar was neither the contractor nor the labour of DESU at the relevant time.

17. A2 has been convicted for offence u/s 8 of the Act. Section 8 of the Act deals with a situation where a person not necessarily be a public servant, he may be a middle man, solicits/receives any illegal gratification with motive or reward for inducing a public servant for the doing of something by him. In the case in hand admittedly there is no demand by this appellant from the complainant.

18. The circumstances relied upon by the prosecution to fasten the guilt of this appellant primarily are:-

- (i) Recovery of tainted money from his possession.
- (ii) Telephonic conversation between the complainant and A1 at the instance of A2.
- (iii) Nexus between A1 and A2 stands proved from the fact that A2 had come to the house of the complainant on the scooter belonging to A1.

19. So far as recovery of tainted money from the possession of this appellant is concerned, the same is undisputed, however, it is settled law that demand and acceptance of the amount as illegal gratification is a condition precedent for constituting an offence under the Act. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would not be sufficient to bring home the charge. Mere recovery of tainted money divorced from the circumstances under which it is paid, is not sufficient to convict the accused. It is incumbent upon the prosecution to prove that there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of amount by accused is not sufficient to fasten guilt in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability that the money was accepted by him other than as a motive or reward as referred to in Section 7 of the

Act. While invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond any reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution.

20. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. This is particularly so, in the instant case when the character of the complainant has been assailed by the appellants on the ground that the complainant was indulging in committing theft of electricity. Moreover, his antecedents were also not clear as he was involved in two criminal cases of pick-pocketing pertaining to PS Kamla Market and Desh Bandhu Gupta Road. Under the circumstances, before convicting the accused, independent corroboration was required.

21. As per the case of prosecution, A2 asked for the alleged amount at the behest of A1 and was entrusted with the same and he further asked the complainant to make a phone call to co-accused, same, however, does not prove beyond reasonable doubt that A2 demanded the money with the knowledge that alleged amount being paid is bribe. It is not the case of prosecution that the appellant was a party to the arrangement and the arrangement arrived at was that the money would

be handed over to A2 to be given to A1 as bribe. Admittedly, A2 was not present when the alleged demand was made by A1 nor there is anything on record to infer that he had any prior knowledge about this settlement. In **Virendernath** (supra), Hon'ble Supreme Court held that :

"in so far as A2 is concerned, we find considerable merit in the contention raised on his behalf that he could have received the money innocently from the complainant at the asking of A1 without realizing that it was bribe money. The arguments prevails because the prosecution has nowhere led any other evidence of conduct or consistency of a behavior from which it could be spelt out that A2 was a habitual go-between in facilitating acceptance of bribe by A1. This single instance which has been brought forth does not reveal of any regularity of conduct of this nature. There thus exists an area of doubt, the benefit of which shall go to A-2".

22. Substantially, similar question arose before a Single Judge of this Court in **Prem Singh Yadav vs. CBI**, 2011(2) JCC 1059 where the learned Judge relied upon the following judgments:-

*"In Suraj Mal vs. State (Delhi Administration), (1979) 4 SCC 725, it was held that mere recovery of money, divorced from the circumstances under which it is paid, is not sufficient to convict the accused when the substantive evidence in the case is not reliable. Mere recovery of money cannot prove the case of the prosecution against the accused in the absence of any instance to prove the payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. In the case of C.M. Girish Babu (supra). The Supreme Court held that mere recovery of money from the accused by itself is not enough in the absence of substantive evidence of demand and acceptance. In this case the reliance was also placed on a three-Judge Bench judgment in **M. Narsinga Rao v. State of A.P.** wherein it was held as under:*

"20. A three-Judge Bench in M. Narsinga Rao v. State of A.P. while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification, observed: (SCC p.700, para 24)

24. ...we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide *Madhukar Bhaskarrao Joshi v. State of Maharashtra*) The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned Counsel: (See P.577, Para 12)

12. 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.

22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.

4. ...It is well established that where the burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence of proof his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4 under the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur verdict of guilt. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden shifts to prosecution which still

*has to discharge its original onus that never shifts, i.e.; that of establishing on the whole case the guilt of the accused beyond a reasonable doubt." (See **V.D. Jhangan v. State of U.P.** at AIR p. 1764, para 4).*

(Emphasis supplied)

15. In the case of **Dnyaneshwar Laxman** (*supra*) also the Supreme Court held as under:

"16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-à-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt."

23. **K. Subba Reddy vs. State of Andhra Pradesh** 2008 CrI.L.J 345 was also a case where the complaint was that Excise Sub-Inspector demanded bribe from complainant for return of stock register. The complainant was asked to pay amount to the accused in case Sub-Inspector was not available. Tainted money was paid and recovered from accused. His conviction was set aside by Hon'ble Supreme Court on the ground that there was no evidence to show that accused had any knowledge that money paid was bribe money. Accused was a

home guard. He had no role to play in return of stock register, as such, evidence was insufficient to convict him. ***Virendranath*** (supra) was again a case where the complainant gave tainted money to A2-a restaurant owner at the request of A1-a police officer. A trap was laid and tainted money was recovered from A2. A1 was convicted under Section 7 and 13(1) (d) r/w Section 13(2) and A2 convicted as abettor u/s 7 r/w Section 12. Conviction of A2 was set aside on the ground that the prosecution had not led any other evidence except for recovery of tainted money from the possession of A2 from which it can be spelt out that A2 was a habitual go-between in facilitating acceptance of bribe by A1.

24. Substantially similar view was taken by the Apex Court in the latest pronouncement reported in (2016) 3 SCC 108 ***Krishan Chander vs. State of Delhi***.

25. Testing on the anvil of aforesaid legal position, let us revert to the case in hand. A1 has taken the plea that A2 was not known to him from before. A2 has also taken the plea that he was working as a labour under DW1-Krishan Kumar and he had done the work of electrical fittings and wiring at the house of complainant at the instance of DW1-Krishan Kumar. Krishan Kumar has supported the version of A2. Learned Trial Court did not believe the testimony of DW1 on the ground that the defence taken by the appellant is an afterthought as no suggestion was given by him to the complainant that Krishan Kumar was contacted by the complainant for installation

of wire etc. This finding of the learned Trial Court does not find support from the testimony of the prosecution witnesses which reveals that except for the fact that name of Krishan Kumar was not suggested to the complainant the entire defence was put to him. The complainant has admitted in his cross-examination that internal electric fittings and wiring was got done by him through private contractor, however, he denied the suggestion that work for installation of electric wire fittings and cables was got done by him through a private contractor. This mere denial is of no consequence because if A2 had merely come to collect the amount of Rs.2000/- at the instance of A1 then there was no occasion for complainant to give a suggestion to him that the cable was not rightly installed to which he replied that the same was rightly installed and there would be no problem. This itself goes to show that A2 had also come to the house of the complainant earlier and that being so, the defence raised by the accused is quite probable. The panch witness has also admitted in cross-examination that in his presence the complainant had asked A2 that cable was not rightly installed to which he replied that the same was rightly installed and there would be no problem. That being so, the defence raised by the accused is quite probable.

26. In. ***Babu Ram*** (supra), Hon'ble Supreme Court while reiterating the law laid down in ***Dudh Nath Pandey vs. State of UP***, 1981 SCC (Cri) 379, observed that the defence witnesses are entitled to equal treatment with those of the prosecution and Courts ought to overcome their traditional, instinctive disbelief in defence witnesses.

27. It was further observed that “Quite often, they tell lies but so do the prosecution witnesses.” Depositions of witnesses, whether they are examined on the prosecution side or defence side or as court witnesses, are oral evidence in the case and hence the scrutiny thereof shall be without any predilection or bias. No witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a court witness. It is judicial scrutiny which is warranted in respect of the depositions of all witnesses for which different yardsticks cannot be prescribed as for those different categories of witnesses.

28. The submission of learned APP for State that no documentary evidence was produced by him to substantiate his version and, therefore, testimony of DW1 cannot be relied upon is devoid of merit as the contract was for a meager amount of Rs.2000/- and, therefore, absence of any documentation is not sufficient to disbelieve the testimony of the witness, more particularly, when right from inception, it is the case of A2 that he was working with a private contractor and had done the job of installation of wiring at the house of the complainant which fact is also admitted by him.

29. As regards the telephonic conversation between the petitioner and A1 at the asking of A2, no call details has been collected by the prosecution and the evidence in this regard rests on the testimony of the complainant and panch witness. However, there is inconsistencies in their stands as according to complainant, A2 had asked him to talk

to A1 on telephone and gave him the telephone number. Thereupon he talked to A1 and requested to reduce the amount but he declined, thereupon he paid the amount but according to panch witness, there was no direct talk between the complainant and A1. According to him, A2 talked to A1 on telephone and informed the complainant that A1 has refused to reduce the amount. In the absence of collecting any call details coupled with the inconsistencies in the statement of the complainant and the panch witness even this fact is not duly proved. As observed in *Suraj Mal vs. State (Delhi Admn.)* AIR 1979 SC 1408 and reiterated in *Om Prakash* (supra), it is well settled that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances, no conviction can be based on the evidence of such witnesses.

30. The other piece of evidence relied upon by the prosecution is recovery of scooter belonging to A1 from the house of the complainant. It is the case of the prosecution that the scooter was seized vide recovery memo Ex.PW3/D. A perusal of the same goes to show that there is no mention that along with the scooter, its key was also seized. Personal search memo Ex.PW3/E of A2-Narender Kumar does not reveal that any key of the scooter was recovered. That being so, seizure of the scooter from the house of the complainant also becomes doubtful.

31. The result of the same is that the evidential facts were not established by the prosecution in order to bring home the guilt of A2 beyond shadow of doubt. Moreover, by preponderance of probability, A2 has satisfactorily discharged the onus laid upon him. Except for recovery of tainted money from his possession no evidence could be proved on record that he had any knowledge that the money paid was bribe money. That being so, the appellant is entitled to get benefit of doubt.

32. As far as A1 is concerned, undisputedly, he was working as meter inspector in Delhi Vidyut Board at the relevant time. According to the complainant, a sum of Rs.2000/- was demanded by him for early installation of meter in his premises. Perusal of the testimony of PW8, 10 & 12 reflects that even qua him, the prosecution could not succeed to bring home his guilt to the hilt as according to PW8, although the complainant had applied for installation of electricity connection at his house, however, during the period 22nd November, 1999 to 26th November, 1999 the file remained with him. According to PW10-Panna Lal, 15 electricity meters were issued to A1 including meter No. E-99-30662 which according to PW12 was to be installed at the house of Murari Lal which was adjacent to the house of complainant, however, according to him, the installation work is done by labourers of the DESU along with contractor and the job of area inspector comes thereafter to check whether the meter has been installed at the correct address or not. But in the instant case, A1 could not get the opportunity to examine the premises in order to

verify whether the meter was installed at the correct place or not as even prior thereto he was trapped. No evidence has come on record to show that the installation of meter at the residence of the complainant was done by the labourers on the asking of A1. It is not the case of prosecution that any money was accepted by this appellant. Acceptance of alleged bribe amount by A2 has not been proved to be at the instance of A1. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the one aspect, namely, acceptance is very important. When the accused has come forward with a plea that A2 was a total stranger to him and was not sent by him, then there must be clinching evidence to show that it was with the tacit approval of A1 that money was received by A2.

33. Moreover, although factum of seizure of scooter belonging to A1 is not disputed by him but according to him, it was seized from his house. In view of discussion made above, keeping in view the fact that while seizing the scooter no key of the same was seized as per the seizure memo and the key was also not recovered from the personal search of A2, the seizure of scooter from the house of the complaint becomes doubtful.

34. As regards the arrest of A1 at the instance of A2, this fact has been denied by A2. Moreover, the arrest is alleged to have taken place

from the office of PW11, who, however, has not supported the case of prosecution.

35. Result of the aforesaid discussion is that even qua A1, prosecution was not able to establish its guilt beyond reasonable doubt. It needs no emphasis that the prosecution has to prove the charge beyond reasonable doubt like any of the criminal offence and the accused should be considered innocent till it is established otherwise by proper proof of demand and acceptance of the illegal gratification, the vital ingredient, necessary to be established to procure a conviction for the offences under consideration. The matter remained in the realm of suspicion, however, it is settled principle of law that suspicion, howsoever grave, cannot take place of proof and in case of doubt, accused is entitled to get benefit of the same.

36. Accordingly both the appeals succeed.

37. For the reasons stated supra, the impugned judgment and order of Trial Court is set aside. The appeals are allowed. Both the appellants are acquitted of the offences alleged against them. Sentence of A1 and A2 was suspended vide order dated ^{25th} January, 2010 and they were ordered to be released on bail. Their bail bonds are cancelled and sureties stand discharged.

Trial Court record be sent back forthwith.

(SUNITA GUPTA)
JUDGE

MAY 06, 2016/rs