

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 19.11.2015
Judgment Pronounced On: 02.03.2016

CRL. A. 507/2008

KISHORI LAL

..... Petitioner

Through: Mr. Vikas Padora, Advocate with Mr.
Vaibhav Aggarwal, Advocate

Versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, APP

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present is an appeal under section 27 of Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act') read with section 374 (2) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), preferred against the judgment and order on sentence dated 09.05.2008 and 12.05.2008 respectively, passed by the Special Judge, Delhi in C.C. No. 43/05, whereby

the appellant has been convicted for the offences punishable under sections 7 and 13(1) (d) of PC Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 2000/- (Rupees Two Thousand) under section 7 of the PC Act, with the stipulation that in default of payment of fine, the appellant shall further undergo simple imprisonment for a period of one month. Further, the appellant has been sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 2000/- (Rupees Two Thousand) under section 13(2) of PC Act, with the stipulation that in default of payment of fine, the appellant shall further undergo simple imprisonment for a period of one month. Both sentences were directed to run concurrently.

2. The substratum of the charge as against Kishori Lal, the appellant herein, who was an employee of the Consumer Court, Janakpuri, New Delhi, is, of having demanded and accepted illegal gratification from Rajender Arya (PW-6), the complainant herein. The case of the prosecution can be briefly encapsulated as under:

- (i) The mother of the complainant herein, had executed a General Power of Attorney with regard to property bearing number- H. No. A-350 Chaukhandi, JJ Colony, Delhi, in favour of the

complainant. The electricity supply of the said house was disconnected by BSES on 03.06.2004 and against this action of the BSES, the complainant's mother filed a case before the Consumer Court, Janakpuri.

- (ii) The Consumer Court, Janakpuri directed the restoration of electricity supply to the house of the complainant's mother vide order dated 02.05.2005 (hereinafter referred to 'the relevant order'). Thereafter, on 09.05.2005 the complainant (PW-6) asked Kishori Lal, the appellant herein, who was stated to be the reader of the Consumer Court, for the copy of the relevant order. For this the appellant allegedly demanded a bribe of Rs. 100/- from the complainant. Consequently, the complainant went to the Anti-Corruption Branch where he got his complaint (Ex. PW6/A) recorded in his own handwriting before the Raid Officer (PW-9).
- (iii) The complainant produced a GC Note of Rs. 100/- (Rupees One Hundred) (in short 'the said GC Note') before Inspector Sunder Dev (PW-9), the raid officer. The serial number of the said GC Note was noted down by PW-9, the raid officer in his pre-raid

report (Ex. PW6/B) after the same was checked by Mohan Singh Rawat, UDC, Directorate of Education, the Panch Witness (PW-8). The said GC Note was treated with Phenolphthalein powder by the Raid Officer (PW-9) and a practical demonstration was given to the complainant and the Panch Witness. The said note was handed over to the complainant who kept the same in the left pocket of his shirt. The Raid Officer (PW-9) instructed the Panch Witness (PW-8) to remain close with the complainant and to overhear the conversation; after being satisfied that the bribe had actually been given, the Panch Witness was asked to give a signal by hurling his hand over his head. The complainant was instructed to remain close to the Panch Witness and to do the transaction in such a manner that he would be able to see the transaction and hear the conversation.

- (iv) A raiding team consisting of Inspector Sunder Dev - the Raid Officer (PW-9), the complainant, the Panch witness (PW-8), Insp. Hari Chand (PW-7) and other members, left for Consumer Court, Janak Puri in a government vehicle at 12:30 PM.

(v) Insp. Hari Chand (PW-7) and the driver stayed in the government vehicle which was parked at Pankha Road. Meanwhile, the complainant and the Panch witness (PW-8) entered Consumer Court, Janak Puri, and at this time, other members of the raiding team took their suitable positions near the Consumer Court. At about 2:40 PM the Raid Officer (PW-9) received the pre-determined signal from the Panch witness (PW-8) that the appellant had accepted the bribe of Rs. 100/- and had kept the said GC Note in his right side pant pocket and supplied the copy of the relevant court order to the complainant. Thereafter, the Raid Officer (PW-9) reached the spot along with his team, and challenged the appellant that he had accepted a bribe of Rs. 100/- (Rupees One Hundred) and the former offered that if the appellant wanted to take his search before he takes search of the latter. However, the appellant refused to do so. After conducting a search of the appellant, the Raid Officer (PW-9) recovered the bribe money of Rs. 100/- from the right side pocket of the pant of the appellant, and on his instructions the Panch Witness (PW-8) further compared the serial number

of that GC note with the serial number in the pre-raid report which was found to be same. The same was taken into possession vide seizure memo Ex. PW6/C.

- (vi) The right hand wash of the appellant as well as right side pant pocket wash were taken in two colourless solutions of sodium carbonate, and both the solutions turned pink. These solutions were transferred to small clean bottles which were sealed with the seal of HCS and were marked RHW I-II (Right Hand Wash) and RSPPW I-II (Right Side Pant Pocket Wash) respectively. The pant of the accused was converted into a *pulanda* and was sealed with the seal of HCS. The Raid Officer (PW-9) took the above-stated bottles, sample seal and *pulanda* of the pant into possession vide seizure memo Ex. PW6/C and the Raid Officer drew the post raid proceedings Ex. PW6/F.
- (vii) The Raid Officer (PW-9) took the copy of the relevant court order dated 02.05.2005, which was marked 'X', into possession vide seizure memo Ex. PW6/D. The *rukka* was prepared by the Raid Officer vide PW9/A and Insp. Hari Chand (PW-7) was called at the spot at 5:40 PM, who was handed over the custody

of the accused, the case property, the recovered said GC Note, exhibits of the case, seizure memos and copy of the raid report for investigation. The site plan was prepared by Insp. Hari Chand (PW-7), the investigating officer (IO), at the instance of the complainant (PW-6) and the Panch Witness, vide Ex. PW7/A. Further, the IO also recorded the statements of the Panch Witness and the complainant, as well as the appellant vide personal arrest memo Ex. PW7/B and personal search of the appellant was also taken vide memo Ex. PW6/G.

- (viii) During investigation, the IO received FSL result Ex. PW7/D, the bio data Ex. PW4/A and the copy of relevant court order vide Ex. PW7/E through covering letter Ex. PW7/F and the attested copy of attendance register was taken into possession vide memo Ex. PW4/B.
- (ix) The sanction order for prosecution of the appellant was received from the sanctioning authority (PW-5) vide Ex. PW5/A.
- (x) After investigation, a charge-sheet was filed before the Special Judge, and an order on charge was passed on 28.03.2006,

whereby charges under section 13 (1)(d) read with section 13(2) PC Act and section 7 PC Act were framed against the appellant.

- (xi) In support of its case the Prosecution examined a total of 10 witnesses. On the other hand the appellant examined two witnesses in his defense.

3. As afore-stated, the Special Judge convicted the appellant under section 7 and 13 (1)(d) of the PC Act punishable under section 13(2) of the PC Act vide judgment dated 09.05.2008. The incriminating circumstances relied upon by the Special Judge to convict the appellant are as follows:

- (i) The testimony of the complainant (PW-6) has been fully corroborated by the Panch Witness (PW-8) and the Raid Officer (PW-9) and on the basis of this; it was held that the existence of demand and acceptance of the bribe amount is proved beyond reasonable doubt.
- (ii) The statements of the complainant and the Panch Witness proved that the copy of the relevant order was handed over by the appellant to the complainant.
- (iii) Testimony of the defence witnesses did not support the case of the appellant.

4. The sentence imposed on the appellant by the Special Judge by way of order on sentence dated 12.05.2008 was suspended by this Court vide its order dated 06.06.2008, and it was observed that the fine imposed on the appellant has already been paid.

5. It is the case of the appellant that the complainant had received the copy of the relevant order dated 02.05.2005 on the same day, and therefore, there was no occasion for the complainant to ask for a copy of the same on 09.05.2005.

6. Learned counsel on behalf of the appellant would also urge that there was an unexplained delay of 7 days in lodging the first complaint against the appellant, since according to the prosecution, the demand was made on 02.05.2005, and the first complaint was lodged only on 09.05.2005.

7. It was further urged on behalf of the appellant that he was not working as a reader of the court on 02.05.2005.

8. Counsel appearing on behalf of the appellant would then urge that a mere recovery of the tainted money from the possession of the accused is not enough to convict the appellant and that the demand of bribe was not proved beyond all reasonable doubt by the prosecution. In order to support this contention reliance has been placed on the decisions of the apex court in **B.**

Jayaraj vs. State of A.P., reported as **2014 (4) SCALE 81** and P. Satyanarayan Murthy vs. The District Inspector of Police and Anr., Criminal Appeal No. 31 of 2009 decided on 14.09.2015.

9. Lastly it was urged by the learned counsel for the appellant that the Learned Trial Court has wrongly convicted the appellant, as the Learned Trial Court failed to consider the testimony of the defence witnesses, which clearly established that the case against the appellant is false.

10. On the other hand, Mr. Rajat Katyal, learned Public Prosecutor appearing on behalf of the official respondent urged that the demand of illegal gratification/bribe is clearly established from a bare reading of the testimony of Rajinder Arya (PW-6), the complainant herein. Mr. Rajat Katyal, learned PP on behalf of the official respondent would then urge that the testimony of the Panch Witness (PW-8) also supported the case of the prosecution to the extent that on the day of the raid, the appellant handed over the copy of the relevant order to the complainant and accepted the bribe money, which he kept in his right side pocket of his pant. Thus, the demand and acceptance of illegal gratification by the appellant stands established beyond all reasonable doubt.

11. Learned PP on behalf of the official respondent would also urge that the FSL Report states that the samples of right hand wash and right side pant pocket wash of the appellant were found to contain phenolphthalein and sodium carbonate, and the appellant has not been able to explain at all the recovery of the tainted currency note from his pocket. In this regard, Learned PP placed reliance on the decision of the Hon'ble Supreme Court in **Phula Singh vs. State of H.P.**, reported as (2014) 4 SCC 9.

12. Learned PP would further urge that the argument furthered by the appellant that the latter was not a reader of the Consumer Court at the relevant point of time does not come to the aid of the appellant, insofar as, a person who receives a gratification as a motive or reward for doing what he is not in a position to do, is also covered under the purview of Section 7 of PC Act.

13. I have heard learned Counsel for the parties and perused the evidence on record.

14. *First* is the issue whether the relevant order was already given to the complainant on 02.05.2005. To establish this fact, the relevant testimony of the defence witnesses have been relied upon by the appellant, and it has been

argued that the same have not been considered by the Special Judge while convicting the appellant.

15. In this regard, it is relevant to point out para 25 of the impugned judgment, which is reproduced as below:

“25. It is submitted by learned defence counsel that there was no occasion for the accused to demand bribe because a certified copy of the order was supplied to the complainant on the same date, ie. On 2.5.05. He has referred to the statement of DW1 wherein he deposed that certified copy of the order was given to the complainant on 2.5.05 itself and same was duly received by him. I do not find any force in the submission of ld. defence counsel. The complaint was regarding demand of bribe by the accused for supplying a copy of the order. Complainant denied the suggestion that he received the copy of the order on 2.5.05 itself and he signed the file in token of receipt of copy of the order. He was never confronted with his signatures. However, accused examined in defence reader of the court to show that the copy was supplied to the complainant 2.5.05 itself but he has failed to prove that copy of order was supplied to the complainant on 2.5.05 itself. In his cross examination he admitted that copy was not delivered to the complainant in his presence. In fact there was signature of the complainant at the end of the order-sheet and on that basis the reader testified that the copy of the order was supplied to him though the same was never supplied to the complainant in his presence. There was practice in the consumer court to obtain the signature of the party or the parokar at the end of the order sheet. DW1 admitted in his cross examination that it is not mentioned that the copy of the order has been received by the complainant. He also admitted that the signature of the complainant also appears on the order sheet dated 5.7.06 5.11.07 and 21.3.07. So it was merely a practice to obtain signature of the party at the end of the order sheet. Whenever a copy of the order was received by the party then it used to be specifically mentioned that the copy has been received. No copy was given to the complainant on 2.5.05. Rather a demand of bribe was made

and for that reason the complainant lodged the report and got the accused trapped.

If the certified copy of the order was supplied to the complainant on 2.5.05 there was no occasion for the complainant to ask for the copy of the order on 9.5.05 and for the accused to supply the copy of the order to the complainant on 9.5.05 at the time of accepting the bribe amount. Complainant specifically testified that accused went inside twice or thrice and after he gave him copy of the order and took Rs. 100/-. He further testified that copy of the order which was given to him by the accused was taken from him by the Raid Officer vide seizure memo. Ex. PW6/E. the copy of that order is marked X. No suggestion was given to the complainant in cross examination that he had not given copy of the order to the Raid Officer or that the same was not seized by him vide memo Ex. PW6/E. similarly no suggestion was given to the Raid Officer that the copy of the order mark X was not given to him by the complainant or same was not seized by him vide memo Ex. PW6/E. Raid Officer denied the suggestion that copy of the order was shown to him by complainant in Anti Corruption Branch during pre raid proceedings and he instructed him to conceal the same. Even the panch witness testified that accused gave the copy of the order to the complainant and accepted the money from the complainant. It is proved that accused had handed over the copy of the order and thereafter accepted the bribe amount.”

16. In view of the foregoing, it becomes apparent that the Special Judge had taken into consideration the relevant testimony of the defence witnesses and had come to the conclusion that they do not support the case of the appellant. The testimony of the defence witnesses do not establish the factual assertion of the appellant that the copy of the relevant order was given to the complainant on 02.05.2005 itself. Moreover, the fact that the relevant order (mark ‘X’) was recovered during the raid proceedings belies the case of the

appellant. Thus, it is observed that the appellant has clearly failed to establish that the copy of the relevant order dated 02.05.2005 was given to the complainant on the same date.

17. Coming now to the argument raised by the counsel for the appellant that the appellant was not the reader of the District Forum, Janakpuri at the relevant time. It was argued by the former that the latter was infact working as a diary dispatcher and did not have the authority to supply a copy of the relevant order dated 02.05.2005.

18. It is a settled position of law that, it is sufficient to show that the bribe money was paid to a public servant working in a particular department and the same was accepted for doing any official act in the said department. It becomes irrelevant as to who was the other public servant who would have rendered that particular service. (Ref: *State of Maharashtra vs. Jagatsingh Charansingh* reported as AIR 1964 SC 492). Therefore, if in the capacity of being a public servant, the appellant has demanded a bribe to do any official act, he can be convicted under the provisions of the PC Act, and the argument that the appellant was not a reader of the District Forum, Janakpuri, and was working as a diary dispatcher, is untenable.

19. Broadly, what remains is the challenge to the impugned judgment, *inter-alia* on the ground that the prosecution has failed to prove the demand and acceptance of bribe by the appellant.

20. In order to appreciate whether there was any demand of the said bribe, the relevant portions of the testimony of the complainant (PW-6) can be looked at.

PW-6 Shri Rajinder Arya, the complainant herein, deposed as follows:-

“Accused Kishori Lal demanded Rs. 150/- from me for supply of copy of the above asked order. I objected his demand as there was no fees prescribed for supplying of copies. Thereafter, accused told me to pay Rs. 100/- only and he also stated that this was the practice in that office.”

In his cross-examination, PW-6 deposed as under:

“There were three staff members in the Consumer Court room. There was one Reader who sits by the side of Presiding Officer. All the three persons used to sit on the dias of the Presiding Officer. It is correct that on 2.5.2005 the presiding officer asked me to collect the copy of the order from the reader. On that day I did not get copy of the order as reader of that court had demanded bribe of Rs.150 for giving the said copy. Vol. Accused was sitting on the seat of reader on that day. It is incorrect to suggest that accused was not the reader of that court. It is also incorrect to suggest that accused was LDC working in the consumer court. Only accused demanded from me. It is incorrect to suggest that on 2.5.2005 I had received the copy of the order passed by the consumer court and I had signed in the token of the receipt of the copy. I had told to the police in my complaint that accused has demanded Rs.150/- from me. (Confronted with complaint Ex.PW-6/A where the demanded amount is

Rs.100/-). I do not remember if I had told the police that “accused also stated that this was the practice in this office” (confronted with complaint Ex.PW-6/A where it is not so recorded). The presiding officer had asked to me to collect the copy of the order after the court time over. When accused called me in the gallery no one was present in the gallery. Accused met me in the gallery. I did not make any complaint to the presiding officer that accused demanded bribe from me. When accused had already told me that taking bribe is the practice in the office so I did not think fit to complaint before the presiding officer. Presiding officer was sitting in his chamber. I did not give any application for obtaining the copy. I do not remember as to how many times I had gone to Anti Corruption Branch but I went there twice or thrice. When I went first time I told my grievances verbally to the official of Anti Corruption Branch but they instructed me to come in the morning along with the complaint. I do not remember as to how many days after demand of bribe, I went to Anti Corruption Branch. Anti Corruption Branch officials used to met me in the Anti Corruption Branch whenever I went there. One Sikh gentleman of Anti Corruption Branch asked me to bring a complaint in writing.”

21. In order to further appreciate whether there was any acceptance of the said bribe, the relevant portions of the testimony of the complainant (PW-6) can be looked at.

PW-6 Shri Rajinder Arya, the complainant herein, deposed as follows:-

“...Thereafter I along with Panch Witness, Raid Officer and other members of raiding party left Anti-Corruption Branch in the noon time at about 12.00 pm in a govt van for Janak Puri District Consumer Forum and reached there within one and half hour. The govt vehicle was left on the road outside the office. I along with panch witness went inside the office and had proceeded to first floor where accused Kishori Lal met me and at that time he was taking lunch as it was lunch time. Accused was sitting along with one other person, on the side

chair of the Presiding Officer, (as this Stenographer is sitting here). I inquired about my papers and accused replied that he would give the same after lunch. Thereafter accused went outside once or twice and came on his seat after sometime. Then I along with panch witness went near the accused and asked him to give the copy of orders and I told him that I have brought the money. Accused told me that documents could not be given on that day. Then accused went inside twice or thrice and after sometime he gave me the copy of order to me and had taken Rs. 100/- GC treated note from me which he kept in the right side pocket of his pant.

In his cross-examination, PW-6 deposed as under:

“...I had reached Anti Corruption Branch between 9.00 to 10.00 A.M. and remained there for about two hours. I do not remember as to how many members were there in the raiding team. Vol. Perhaps it comprised of about 5/6 members. They were in civil dress. Panch witness was from outside. I do not remember as to at what distance the government vehicle was parked. Vol. It was perhaps 100/150 meters. All the members of the raiding party remained sitting in the government vehicle while panch witness accompanied me to the office of accused. Accused met me while he was sitting besides the chair of the presiding officer who was not present at that time. Two persons were taking lunch at that time. I asked the accused to give the copy of the order and to take what was demanded. Accused told me that he would talk with me after taking lunch. I sat on the chair lying there. After taking lunch the accused went his room but I remained sitting in the court room. Firstly, accused was reluctant in giving the papers to me. After 10/15 minutes accused again came to me and I requested to give the papers and I also told him that I was ready to give the demanded money. Thereafter, accused gave the documents to me and then I gave the bribe money to the accused. At that time three persons were present there. All the members of the raiding team who went from the Anti Corruption Branch came in the room of the accused within two minutes after receiving signal. All the members of the raiding team apprehended the accused. It is incorrect to suggest that accused never demanded or accepted

any bribe from me. It is also incorrect to suggest that the accused was not working as reader in that court. It is incorrect to suggest that duty of giving the copies is of reader. It is incorrect to suggest that accused was LDC working in the office and has no concerned with the supplying of the copies of the order. We remained at the spot up to 6.00 or 7.00 p.m. I along with panch witness and all the members of the raiding team went to Anti Corruption Branch from the spot. We remained there for about two hours. As far as I remember as to what was done during that two hours period. It is incorrect to suggest that I am deposing falsely.”

22. Further to corroborate the testimony of the complainant, PW-6, the relevant portions of the testimony of PW-8 Shri Mohan Singh Rawat, UDC, Directorate of Education, Old Secretariat, Delhi, can be looked at.

The Panch Witness, PW-8, deposed as follows:

“...At about 12.30 noon, I along with complainant and members of raiding party left Anti Corruption Branch in a govt vehicle to reach District Forum Consumer Protection Janak Puri and we reached there at about 1.55pm. The govt vehicle was left at some distance away and I along with the complainant went to the office of Consumer Forum while the members of raiding party took their suitable positions behind us. When we entered in the room, accused Kishori Lal, now present in court (correctly identified) was having lunch. The complainant asked the accused to give the copy of order. Accused asked the complainant to wait for some time and he would give the copy after lunch. We waited there after sometime and we again met the accused. Complainant told the accused that he had brought whatever was told by the accused. The accused told the complainant that since Reader was not there and he has no idea about it, so he cannot give the copy. Then complainant insisted the accused to give the copy. Accused told the complainant that he would try and

after sometime, accused brought the copy of order. The accused gave the copy of order to the complainant and accepted the money from the complainant and kept the same in his right side pocket of pant...”

23. The testimony of the complainant (PW-6) evidently demonstrates that when the complainant had approached the appellant to obtain a copy of the relevant order dated 02.05.2005, there was an express demand of Rs. 100/- by the appellant. The testimony of the complainant has remained unshattered after detailed cross-examination.

24. Furthermore, the testimony of the Panch Witness (PW-8) substantially corroborates the testimony of the complainant in all material particulars regarding the acceptance of the bribe. Hence, the factum of demand as well as acceptance of the bribe money has been clearly established beyond reasonable doubt.

25. Moreover, the fact that the said GC Note was recovered from the possession of the appellant and that the right hand wash as well as the right pocket wash of the appellant, was taken in a colourless solution of sodium carbonate, which turned pink, cannot be lost sight of. The above facts have been corroborated by the testimony of the complainant (PW-6), the Panch Witness (PW-8) and the Raid Officer (PW-9). The relevant extracts of the above-stated testimony are reproduced below:

PW6, Shri Rajinder Arya testified as under:

“...In the meantime panch witness went outside and gave pre-determined signal. The members of raiding party came there at the spot and apprehended the accused. The raid officer caught hold the hand of the accused and disclosed his identity. Accused became perplexed. Thereafter, panch witness recovered that GC Note of Rs. 100/- from the right side pocket of the accused. It was the same GC Note which was given by me to the raid officer. That GC Note was taken into possession vide seizure memo Ex. PW6/C which bears my signature at point A. Then the hand wash and pant pocket was taken in some water like solution separately which turned into pink. That pink solution was then transferred into four small empty clean bottles which were sealed by the raid officer. Marked paper slips were pasted on those bottles and I put my signatures thereon. The pant of accused was converted into pullanda which was also sealed by the raid officer. That pullanda of pant and bottles was also taken into possession vide memo Ex. PW6/D....”

PW8 Shri Mohan Singh Rawat, UDC, Directorate of Education, Old Secretariat, Delhi also deposed as follows:

“...Thereafter, I gave pre-determined signal to the raiding team. The raiding team arrived there immediately and apprehended the accused. The raiding team disclosed their identity and challenged the accused that he had accepted bribe from the complainant and also offered their search to the accused but accused refused to do so and beg pardon. I then, on the instructions of the raid officer recovered those GC Note from the right side pocket of the pant of the accused. The serial number of that GC Note was tallied with the serial number recorded in pre-raid report which tallied. That GC Note was taken into possession vide seizure memo Ex. PW6/G which bears my signatures at point B. Thereafter right hand wash and right side pocket of the pant of the accused was taken in some water like solution which turned pink. The solution was transferred into four small clean empty bottles

which were sealed with the seal of HCS and marked paper slips duly signed by me, complainant and raid officer were pasted on those bottles and the pant of the accused was converted into pullanda, and those bottles and pant pullanda were taken into possession vide seizure memo Ex, PW6/D which bears my signatures at point B...”

PW9 Inspector Sunder Dev, Inspector Law and Order, PS IP Estate, Delhi testified as under:

“...At about 2.40 pm, I received pre determined signal from the panch witness and I along with raiding team rushed to the office, room No. 150, District Forum, Consumer Protection, Janaka Puri. I asked the panch witness, what had happened and he told me that accused kishori lal accused present in the court today (correctly identified) had taken bribe money of Rs. 100 from the complainant with his right hand and had kept the same in the right pocket of his pant.

I introduced myself as Inspector from Anti-Corruption Branch and challenged the accused that he had taken the bribe of Rs. 100 from the complainant. Accused became perplexed. I offered that if he wanted to take my search before taking his search, he can do but accused refused to do. I instructed the panch witness to recover the bribe money and the panch witness recovered the bribe money of Rs. 500 from right pocket of the pant of the accused. On my directions, the panch witness compared the sl. No. of that recovered GC notes with the sl. No. mentioned in pre raid report Ex. PW6/B and they tallied. That recovered GC notes were taken into possession vide seizure memo Ex. PW6/C which bears my signatures at point C. The right hand wash of the accused and right pant pocket wash were taken separately in a colourless solution of sodium carbonate which turned into pink. That solution were transferred into four empty, small clean bottles which were sealed with the seal of HCS. Marked paper slips RHW-I and II, RSPPW-I and II were pasted on the bottles after obtaining signatures of panch witness and thereon. The pant of the accused was converted into pullanda with the help of same

seal after obtaining signatures of panch witness and complainant in the inner portion of the pant...

...I took into possession the copy of order mark X vide seizure memo Ex. PW6/E.”

26. The established position of law is that to constitute an offence under the PC Act, the proof of demand and acceptance of the bribe amount as illegal gratification is a sine qua non. Further, once the demand and acceptance of illegal gratification has been established, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the PC Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was demanded and accepted by him, other than as a motive or reward as referred to in Section 7 of the PC Act. (Ref: *State of Punjab vs. Madan Mohan Lal Verma*, reported as (2013) 14 SCC 153).

27. The decisions in *B. Jayaraj vs. State of A.P.*, (*Supra*) and *P. Satyanarayan Murthy vs. The District Inspector of Police and Anr.* (*Supra*), as cited by the learned counsel for the appellant, do not come to his aid, in as much as the facts in the instant case can be easily distinguished from the facts in the said cases. In **P. Satyanarayan Murthy** (*Supra*), the proof of demand was not forthcoming in view of the circumstance of the demise of the complainant; whereas, in **B. Jayaraj vs. State of A.P.** (*Supra*),

the complainant did not support the prosecution case in so far as demand by the accused was concerned.

28. In the present case the factum of demand and acceptance has been proved by the recovery of the tainted amount as well as the clear, unambiguous and unchallenged testimony of the prosecution witnesses. The testimony of the complainant has been duly corroborated by the testimony of the independent Panch witness as well as by the testimony of the raid officer. The essential ingredient of demand and acceptance has thus been proved by the prosecution.

29. It is observed that the appellant has been unable to explain the circumstance as to how the said GC Note was recovered from his possession. The appellant has further not been able to explain the fact that his right hand wash as well as right side pant pocket wash had turned the sodium carbonate solution to a pink colour. Thus, the recovery of the tainted money has not been explained or rebutted by the appellant. The offence under section 7 of the PC Act is thus made out in light of the fact that the appellant has not been able to explain or justify the recovery of the said GC Note from his possession. (Ref: *State of A.P. v. P. Venkateshwarlu*, reported as (2015) 7 SCC 283).

30. These circumstances warrant the presumption provided under the provisions of section 20 of the PC Act, and the appellant has further not been able to satisfactorily rebut the same, as afore-stated.

31. In view of the foregoing, the present appeal is without any merit. The impugned judgment and the order on sentence dated 09.05.2008 and 12.05.2008 respectively, passed by the Trial Court whereby the appellant was convicted and was sentenced to undergo rigorous imprisonment for a period of one year under section 7 of PC Act and to further undergo rigorous imprisonment for a period of one year under section 13(2) PC Act, concurrently, is upheld. The accused be taken into custody forthwith to serve the remaining sentence awarded to him. The bail bond stands cancelled. Surety discharged.

32. Consequently, the appeal is dismissed.

SIDDHARTH MRIDUL, J

MARCH 02, 2016

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