$~24

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

\+ CRL.REV.P. 555/2016

STATE ..... Petitioner

Through: Mr.Ashish Dutta, APP.

versus

RAJEEV KUMAR ARORA ..... Respondent

Through: Mr.Amit Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

<u>O R D E R</u>

% 26.07.2017

The State seeks to challenge the order dated 19.05.2016 passed by the learned Special Judge (P.C Act) (ACB), Central-05, Tis Hazari Courts, Delhi in CC No.3/2016 arising out of FIR No.19/2012 registered with Anti Corruption Branch police station for the offences under Sections 7 & 13 of the Prevention and Corruption Act, 1988, whereby the respondent was discharged.

The respondent is alleged to have demanded Rs.50,000/- from one K.K.Sharma, an officer with the transport department, for clearing his pension files when aforesaid K.K.Sharma was on the verge of retirement. The respondent is alleged to have asked for Rs.10,000/- as the first installment to be paid on 05.11.2012.

On the complaint of K.K.Sharma, a trap was laid and the respondent was allegedly caught accepting bribe of Rs.10,000/- on 05.11.2012 in presence of one Deepak Gaur, a witness.

After the lodging of the case against the respondent, the investigation proceeded and chargesheet was submitted against him under Sections 7 & 13 of the Prevention and Corruption Act, 1988.

At the stage of the framing of charge, the Trial Court took note of the fact that the witness before whom trap was laid, namely, Mr.Deepak Gaur had stated during the course of investigation that in his presence, whenever money was attempted to be given to the respondent, he refused. However, he and K.K.Sharma, the complainant went to the room of the respondent and kept the phenolphthalein powder treated notes in the pocket of the respondent.

The Trial Court also took note of the fact that in the post raid proceedings which were recorded in the handwriting of Inspector Kailash Chand, a different version was given by the aforesaid witness.

Thus the Trial Court was of the view that there was no demand of the respondent for any illegal gratification. The post trap proceeding was also found to have been signed only by the police officer recording it only and was not counter signed by either the complainant or the witness.

Since proof of demand of illegal gratification is the *sine qua non* for the offence under Sections 7 & 13 of the Prevention and Corruption Act, 1988, absence of any cogent material regarding such demand would make the prosecution case doubtful and in such an event the prosecution has necessarily to fail.

At the stage of framing of the charge, the Trial Court has the authority to weigh the evidence, albeit, only for the limited purpose of finding out as to whether prima facie case against the accused is made out or not. If there is grave suspicion against the accused which could be culled out from the materials available before the Trial Court, charges ought to be framed. In cases of mere suspicion as distinguished from grave suspicion regarding the complicity of the accused and if two views about such complicity are possible, then in that event it is only safe to discharge the accused.

The Trial Court on analyzing the factual materials and the law regarding the same, came to the conclusion that the respondent ought not to be charged for the offences under Sections 7 & 13 of the Prevention and Corruption Act, 1988 for his trial.

This Court finds no reason to interfere with the impugned order.

The revision petition is dismissed.

ASHUTOSH KUMAR, J

JULY 26, 2017

k