IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.329 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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Murlidhar Prasad, son of Late Chhatu Bhagat, resident of Mohalla Chandra Mahraj Ka Garh, P.S. Khjakala, Town and District Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Laxmi Narayan Das, Advocate

For the Respondent/s : Mr. Sanjay Kumar, S.C., CBI

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

CAV JUDGMENT

Date: 27-07-2018

Sole appellant has preferred this appeal against the judgment and order dated 30.5.2003 passed by Sri Braj Nandan Sahay, Special Judge, C.B.I., South Bihar, Patna in Special Case No. 19 of 1996/R.C.No. 18(A) of 1996, by which sole appellant has been convicted under Section 7 as well as Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of two years on both the counts and the sentences were directed to run concurrently.

2. Prosecution case as per the complaint lodged by one Braj Nandan Prasad Singh (PW 1) is that the complainant is an agent of National Savings, UTI and LIC, etc. and his wife is also principal agent of National Savings Organisation. The appellant was Deputy Director of National Savings and in order to clear pending bills of the wife of complainant he demanded gratification of Rs.1200/- and later

on request he agreed to pass the bill on demand of Rs.1000/- with condition that complainant had to pay Rs.200/- per month for passing the bill of his wife. Complainant filed a complaint before the S.P., CBI and allegation was verified and on verification a trap team was constituted and a trap was organized and appellant was caught red-handed while accepting bribe of Rs.1000/- for passing the bill of his wife. After verification, FIR has been lodged.

3. After investigation CBI filed prosecution report. Later on charges were framed against the appellant under Section 7 and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act.

4. In order to prove its charges the prosecution has examined altogether 13 witnesses, they are PW1 Teruveedula Shikama Murty, PW 2, Braj Nandan Prasad Singh (complainant), PW 3 Hari Kishan Lal, PW 4 Bimal Chand Purkayat, PW 5 Om Prakash Sinha, PW 6 Om Prakash Chaudhary, PW 7 Ingla Sinha, PW 8 Mahendra Prasad, PW 9 Harishchandra Chaudhary, PW 10 Anil Singh, PW 11 Jamir Asgar, PW 12 Girdhar Pandey, PW 13 Kumar Amar Singh.

5. Besides the above ocular evidence a large number of documents have been brought on record as exhibits and material exhibits.

6. On behalf of defence two witnesses have been examined, they are DW 1 Ramgati Singh and DW 2 is appellant himself.

7. PW 1 is the Commissioner of National Savings and he has

accorded sanction order for prosecution in this case, which is Ext.1 and this witness has stated in his cross examination that he has not verified the truthfulness of the charges leveled against the appellant from Patna office at the time of according sanction and not verified as to whether any bill of Smt. Ingla Sinha is pending before appellant.

8. PW 2 is the complainant in this case and he has stated that his wife is the principal agent of National Saving Organization (NSO) and her bill was pending before the appellant, who was posted as Deputy Director. His evidence in chief further discloses that bills of October, 1995, November, 1995 and December, 1995 were pending and he has proved the same as Exts. 2 to 2/2. His evidence in cross examination further shows that the appellant created obstacle in passing of the bills and demanded Rs.200/- per month and demanded Rs.1200/- but after talk it was fixed for Rs.1000/-. As he was not interested in paying the gratification, he filed written complaint before the S.P., CBI on 22.3.1996 and he has proved the complaint as Ext.3. His evidence further shows that the S.P., CBI has got the allegation verified. His evidence further disclosed that a trap team was constituted and on a plain paper powder was kept and on touching of powder and the finger being dipped in the solution, it turned pink and thereafter solution was kept in a bottle and the same was sealed and signed by him (Material Ext.1). Thereafter the powder was kept in envelop and it was sealed (Material Exhibit-II). His evidence further

disclosed that thereafter on demand he gave Rs.1000/- consisting of seven G.C. notes of Rs. 100/- and six G.C. notes of Rs.50/- and in his presence the CBI official has smeared them with some chemicals and asked him to give to the appellant and thereafter signaled them by rubbing head when transaction was over. His evidence further shows that a pre-trap memo (Ext.10) was prepared. He has stated that after the formalities were over all the team members went to N.S.O. office. The complainant went to the office of appellant along with Om Prakash who was a shadow witness. The witness went at the tea stall where appellant appeared and demanded bribe money. The complainant gave bribe money to the accused who took in his hands and counted it and kept it in his pocket of his shirt. Then complainant gave signal by rubbing his hands. C.B.I. officers rushed there and caught both hands of the accused appellant. Third C.B.I. officer took out bribe money from the pocket of shirt of appellant and then trap team took the accused appellant to C.B.I. office where other formalities regarding dipping the hands of the accused and his shirt in the solution, preparing recovery memo and packing of these things were done. This witness has been cross examined at length and his cross examination in paragraph-11 disclosed that work for his wife relates to Kadam Kuan Post Office which is related to G.P.O. and that was under the jurisdiction of Sri Moti Prasad and the Bankipur is under the jurisdiction of the appellant. His evidence in cross examination further disclosed that since December, 1995 billing process of both the areas were given to the appellant but he does not know. In paragraph 14 of his cross examination he has stated that renewal application of his wife was sent to the Director by Sri Moti Prasad but he does not know that Director has asked show cause from Moti Prasad for sending irregular recommendation and he does not recollect as to when agency of his wife was renewed.

9. PW 3 Hari Kishan Lal is the verifier and he has stated that he verified the truthfulness of the complaint and submitted the verification report and he has proved the same as Ext.5. His evidence also shows that he was also member of trap party. His evidence in chief also shows that the money was recovered by Om Prakash Chaudhary, an independent witness. His cross examination in paragraph-7 shows that in front of him the appellant demanded gratification. He has proved verification report as Ext.5.

10. PW 4 is Junior Scientific Officer, CFSL, Calcutta where sealed bottles were sent for chemical examination and he has stated that in all the bottles he has found the remaining of phneptholine and sodium carbonate mixture and he has also sent the report to the S.P., C.B.I., which was marked as Ext.5 (perhaps wrongly been marked as Ext.5 as verification report has already been marked as Ext.5).

11. PW 5 Om Prakash Sinha was the Deputy Director, National Savings and his evidence disclosed that C.B.I. seized some

papers from his office during the investigation. In his cross examination this witness has stated that payments of commission of agents were under the Regional Director and further stated in paragraph-3 of his cross examination that order was issued by Regional Director to the effect that payment of bill of the agents had to be done by the appellant and the payment process work for the agents who were under the Moti Prasad had also to be done by the appellant. His evidence further shows that he does not say that all the pending bills of wife of complainant were paid in January, 1996 and her agency was closed on 5.11.1995 and till 22.3.1996, the date of occurrence the licence was not renewed and until the licence is renewed, payment of bill cannot be made and no bill of her was received in his office for October, November and December, 1995. His evidence also shows that when the bills were produced before the Deputy Director he initialed on all those bills but there was no initial of appellant on those bills.

12. PW 6 Om Prakash Chaudhary is said to be an independent witness and at that time he was L.D.C. in C.G.H.S. Office. His evidence in chief disclosed that Inspector introduced him and read over the complaint and he has also stated about the process of pre-trap memorandum and complainant was asked to handover the gratification when the demand would be made. Thereafter near Ashok Cinema hall complainant went inside the office and thereafter

appellant came out and reached near the tea stall and they had a talk but he could not hear the talk. Thereafter complainant Braj Nandan Pd. Singh had given gratification and on signal C.B.I. team reached there and caught the hands and taken him to C.B.I. office.. This witness in his cross examination has stated that 3-4 days before occurrence Deputy Director of his office was trapped for taking Rs.2000/- and a case has been lodged. He has also stated that he does not recollect as to whether he has been directed to listen talk between the appellant and complainant and paragraph-11 of his cross examination further disclosed that there was a distance of 40-45 feet from the tea stall, where they were standing. He has also stated that he has not seen the complainant paying money and appellant accepting the same properly. His evidence in paragraph-12 further shows that he saw some currency fallen on the ground.

13. PW 7 Ingla Sinha, wife of the complainant and was principal lady agent and her evidence disclosed that she was an agent in Kadamkuan Post Office vide licence No. 231/89. and her commission for October, 1995, November, 1995, December, 1995 and January, 1996 was pending and appellant has to pass those bills and in spite of her request the appellant was not passing the bills and demanded Rs.1000/- and for each month Rs.200/- from her. She has further stated that aforesaid talk of payment was informed by her husband. In her cross examination paragraph-10 she has stated that

licence was to be renewed in every three years but she could not say as to whether her licence expired on 5.11.1995 and on 22.3.1996 her licence was renewed.

14. PW 8 is another independent witness and also an employee of C.G.H.S. and his evidence disclosed that they were told that they had to trap the appellant and post trap memo was prepared. His evidence in chief further disclosed that appellant came along with Brijnandan and went to tea stall and thereafter he said officials appellant was caught by the CBI. He has not seen the accused appellant receiving money from the complainant Braj Nandan Prasad. This witness was declared hostile.

15. PW 9 is the retired Director of National Savings and he was Director in National Savings from 1995 to 1997 and during that period appellant was the Deputy Director. His evidence disclosed that work of passing of bills was given to the appellant and when the appellant got power bills of Ingla Sinha till September, 1995 were passed by the appellant in January, 1996. His evidence also disclosed that the licence was valid for three years and licence of Ingla Sinha was expired and she has submitted renewal application which was recommended by Deputy Director and in the case of Ingla Sinha that recommendation has to be made by Moti Prasad and he has stated that recommendation was made late and show cause was asked from Moti Prasad and ultimately licence was renewed in April, 1996. His

evidence further goes to show that prior to renewal of licence, she was not authorized to get the bill passed and further his evidence disclosed that from 5.11.1995 to April, 1996 Ingla Sinha was not an agent and her bill was not passed for the period and even if it is passed he would not have approved the same. Paragraph-8 of his cross examination further shows that in Exts. 2 to 2/2 were carbon copies of the bills and there is no receiving on the same.

16. PW 10 is the Inspector of CBI and his evidence in chief disclosed that complaint was received in CBI office and pre-trap memorandum was prepared thereafter trap was led and appellant was arrested and money was recovered. His evidence shows that Om Prakash had recovered notes from the pocket of the appellant and it was tallied from the number of G.C. notes. Thereafter he has also stated about the process of the post trap memorandum and prepared recovery memo (Ext.11). This witness has been cross examined and in his cross examination he has stated that he had not seen the notes fallen on the ground.

17. PW 11, who was Regional Director of National Savings, has stated in his evidence that bills of principal lady agent were prepared on a form and he had narrated the procedure for filing bill of commission of an agent. However, in his cross examination he has stated that the accused appellant had reached in the office at 12.30 P.M. His evidence further disclosed that Exts. 2 to 2/2 were the

carbon copy as such payment could not be made on that and until licence is renewed payment cannot be made.

18. PW 12 Girdhar Pandey, who was CBI Inspector, has stated that in this case FIR has been lodged by him and he has proved the same as Ext.-9 and endorsement of S.P. and signature over the same. It was lodged on the complaint of Braj Nandan Pd. Singh. He has also stated that he was also in the trap team and after demonstration pre-trap memo was prepared in his dictation and he has proved pre-trap memorandum as Ext.10. His evidence further discloses that trap was led by CBI and the accused was apprehended and his one hand was caught by him and another by Inspector Anil Singh and Om Prakash has recovered money from the pocket of the appellant which was compared with the number of the notes. His evidence also disclosed that post-trap memorandum/recovery memorandum (Ext.11) were prepared.

19. PW 13 Kumar Amar Singh was the Dy.S.P. and has stated that he was Investigating Officer of the case. He has proved the FIR (Ext.9) and complaint (Ext.3) which has already been marked as well as verification report (Ext.5) prepared and seizure list (Ext.6) and said that seized bottles were sent to CFSL(Ext.5) and obtained report of CFSL and thereafter submitted charge sheet. In his cross examination his evidence disclosed that every agent has fixed year of licence and licence of Ingla Sinha lapsed on 5.11.1995 and she had

applied but till date of trap the same was not renewed but he could not enquire that till renewal the agent has no authority to get commission.

20. On behalf of defence two witnesses have been examined, DW 1 Ramgati Singh was retired Regional Director of National Savings and he has stated that appellant was under him as District Savings Officer. His evidence further disclosed that every bill received bears initial of person who had received the same and thereafter it was entered into diary, which was verified and it also bears seal of Post Office and a certificate attached by the Agent as to whether the amount was deposited in Post Office then only commission was given to the agent. His evidence further disclosed that the licence of the agent has to be continued for a period and if it is lapsed till the licence is renewed payment could not be made. After perusing Exts. 2 to 2/2 this witness has stated that schedule is not attached with the bill and signature of Post Master or seal was also not there nor it is diarized nor is there any receiving on the bill and it was not put up before any officer.

21. DW 2 is the appellant Murlidhar Prasad himself and in his evidence he has stated that bill of Ingla Sinha till September, 1995 was proposed in first week of January, 1996 and sent to the Director and payment was made in February, 1996 and bill of November, December, 1995 were not pending in his office or before him and on the date of occurrence that bill was produced but the same was not put

up before him.

22. Learned trial court after conclusion of trial has convicted the appellant under Section 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act and sentenced him as stated above.

23. Learned counsel for the appellant has assailed the judgment on the ground that the sanction given by PW 1 is not a proper sanction and he has not applied his mind as to whether any bill of wife of the complainant was pending before him and in support of his contention he has relied upon a decision in the case of **Mansukhlal Vithaldas Chauhan vs. State of Gujarat : (1997) 7 SCC 622.**

24. Another point which was raised by learned counsel for the appellant is that so far evidence of payment, acceptance and recovery is concerned, prosecution has failed to prove the same and in this connection submission is two fold, (1) that the evidence of PW 9 in paragraph-6 shows that licence of wife of the complainant expired on 5.11.1995 and recommendation for renewal of application has been made by Moti Prasad and the same has been sent by Moti Prasad with delay for which he was asked to show cause. Further submission is that since 9.1.1995 to April, 1996 Ingla Sinha was not authorized agent and as such even if her bills were submitted that cannot be passed and no payment could be made and evidence of PW 5

paragraph-3 disclosed that the agency of the wife of the complainant expired on 5.11.1995 and that was not renewed and at the time of complaint till it is renewed, no bill could be passed and whenever it is received there must be initial on it but there is no initial on bills of October, November and December, 1995. DW 1 has been examined on behalf of defence, who is retired Regional Director of National Savings and he has stated in his evidence in paragraph-1 that for the payment of bill licence must be in continuing position and when the licence expired payment is not made till the licence is renewed. It has also been submitted on perusal of Exts. 2 to 2/2, carbon copy of the bill DW 1 has stated in his evidence that there is no seal or signature of the Post Office and there is no receiving of any officer of his office and as such the very basis of the genesis of allegation of is disbelieved by the aforesaid evidence and thus genesis of the occurrence is itself doubtful. Secondly, it has been submitted that though allegation of payment of bribe has been made and there is acceptance of the amount and recovery but evidence of PW6, who is an independent witness in this case, completely demolished the prosecution story of demand and his evidence in cross examination further disclosed that he had not seen complainant paying money and appellant accepting same and further his evidence in paragraph-12 shows that some notes were fallen at the place of occurrence and so far another independent witness PW 8 is concerned, he has been declared hostile and he has not stated that anybody was giving money to the appellant or CBI officers have recovered the same. He has only stated that he had seen CBI officer apprehending the appellant and he had not seen Murlidhar taking money and he has been declared hostile by prosecution. As such, so far payment, acceptance and recovery of the amount is concerned, independent witnesses have not supported the same and so far other witnesses, including complainant is concerned, they are interested witnesses and their evidence on scrutiny, does not inspire confidence.

25. Further submission of learned counsel for the defence is that the demand, acceptance and recovery for illegal gratification if not proved by proper evidence are not sufficient for conviction under Sections 7 and 13(2) of the Prevention of Corruption Act and he has relied upon a decisions in the case of **Mukhtiar Singh vs. State of Punjab : (2017) 8 SCC 136** and in the case of **State of Kerala and another vs. C.P.Rao : (2011) 6 SCC 450** on the point that there is no corroboration testimony or demand by any other witness, i.e., independent witness, evidence of complainant cannot be relied upon. Further he has cited a decision in the case of **Satvir Singh vs. State of Delhi : (2014) 13 SCC 143**, decision in the case of **C.M. Girish Babu vs. CBI, Cochin, High Court of Kerala : (2009) 3 SCC 779,** decision in the case of **V. Sejappa vs. State by Police Inspector Lokayukta, Chitradurga : (2016) 12 SCC 150** and further cited a

decision in the case of **T.K.Ramesh Kumar vs. State through Police Inspector, Bangalore : (2015) 15 SCC 629.** It has been submitted that in the present case also the evidence of demand, acceptance and recovery is not sufficient and in such a situation there shall be no conviction under above Sections.

26. On the other hand, learned counsel for the CBI has submitted that so far demand, acceptance and recovery are concerned, PW 2, who is complainant, has stated in paragraph-7 of his evidence that money was taken at the tea stall which was counted, kept in pocket by the appellant and no suggestion has been given denying the aforesaid evidence and in paragraph-19 of his evidence PW 2 has reiterated that near petrol pump at tea stall money was given to the appellant and PW 3 is verifier and his evidence in paragraph-3 shows that appellant was given money and paragraph-7 shows that appellant demanded money. My attention has been drawn towards paragraph-6 of evidence of PW 6 that he had seen the money being given to the appellant and no cross examination has been made. Similarly PW10 in paragraph-4 of his evidence has supported the demand and recovery and as such there are sufficient evidence on the point of demand and recovery and in such a situation conviction is just and proper. In support of his contention learned counsel has relied upon decisions of the Apex Court in the case of **B.Noha vs. State of Kerala and another : (2006) 12 SCC 277**, in the case of **R. Sundararajan vs.**

State by DSP, SPE, CBI, Chennai : (2006) 12 SCC 749, in the case of **M.W.Mohiuddin vs. State of Maharashtra : (1995) 3 SCC 567**, in the case of **Ajit Kumar Vasantlal Zaveri vs. State of Gujarat : 1993 Supp(1) SCC 482**, in the case of **State of A.P. vs. S. Janardhana Rao : (2005) 1 SCC 360** and in the case of **State of W.B. vs. Kailash Chandra Pandey : (2004) 12 SCC 29.** Further submission of learned counsel for the CBI is that once prosecution has been able to prove the demand, acceptance and recovery there shall be presumption under Section 20 of the Prevention of Corruption Act and defence has not given any explanation for the aforesaid demand and recovery and in such a situation also conviction of appellant is sustainable. It has also been submitted that even if it is presumed that licence was not renewed but there was demand by the appellant and he has received bribe for that and as such he cannot be given benefit that there was no pending bill before him. On the basis of the aforesaid decisions cited by learned counsel for the CBI it has been submitted that the judgment and order is quite sustainable which does not require any interference by this Court.

27. In the background of submission of learned counsel for the appellant and learned counsel for the CBI on perusal of the judgments cited by the parties it appears that the main contention of learned counsel for the appellant is that mere recovery is not sufficient rather prosecution has to establish demand, acceptance and recovery

by cogent and reliable evidence and in absence of that conviction under Sections 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act is not sustainable in the eye of law, whereas main thrust of learned counsel for the CBI is that mere contradiction is not sufficient to brush aside the conviction of the appellant and once prosecution has been able to prove that the tainted money has been recovered from the appellant and hand of the appellant while dipping in the solution became pink, it is upon the defence to explain the same.

28. On perusal of large number of decisions cited by both the parties, as stated above, it appears that Hon'ble Apex Court after considering so many judgments, in Mukhtiar Singh's case (supra) in paragraphs 13 and 14 has held as follows :

> "13. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In A. Subair v. State of Kerala, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this enunciation further, it was exposited in State of Kerala v. C.P.Rao that mere recovery by itself of the amount said to have been paid by way of illegal gratification would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.
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> 14. In P. Satyanarayana Murthy, this Court took note of its verdict in B. Jayaraj v. State of A.P. underlining that

> mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. This Court thus in P. Satyanarayana Murthy on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder : (SCC p. 159, para 23)
> "23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder.""

Similarly, in the C.P.Rao's case (supra) Hon'ble Apex Court in paragraph-7 of the judgment has held as follows :

> "In the background of these facts, especially the non-examination of CW 1, was found very crucial by the High Court. The High Court has referred to the decision of this Court in Panalal Damodar Rathi v. State of Maharashtra wherein a three-Judge Bench of this Court held that when there was no corroboration of testimony of the complainant regarding the demand of bribe by the accused, it has to be accepted that the version of the complainant is not corroborated and, therefore, the evidence of the complainant cannot be

relied on. In the aforesaid circumstances, the three-Judge Bench in Panalal Damodar Rathi case held that there is grave suspicion about the appellant's complicity and the case has not been proved beyond reasonable doubt."

And further in paragraph-10 of the said judgment has held as follows :

" In C.M. Girish Babu v. CBI, this Court while dealing with the case under the Prevention of Corruption Act, 1988, by referring to its previous decision in Suraj Mal v. State (Delhi Admn.) held that mere recovery of tainted 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. The mere recovery by itself cannot prove the charge of the prosecution against the accused. In the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained."

Further in Satvir Singh's case (supra) Hon'ble Apex Court while dealing with such matter has held in paragraph-35 of the judgment as follows :
"The learned Senior Counsel for the appellant has also placed reliance upon the case of Banarsi Dass referred to supra wherein it was held that : (SCC pp. 456-57, para 24)
"24. In M.K.Harshan v. State of Kerala this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under : (SCC pp. 723-24, para 8)
'8. …. It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. 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 other aspect, namely, acceptance is very important and when the accused

> has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification.'"
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> The abovesaid paragraph from the abovementioned case would go to show that the divergent findings recorded by the High Court on the factum of demand and acceptance of illegal gratification by the appellant is not proved in this case. In the said case this Court in unequivocal terms has held that mere demand by itself is not sufficient to establish the offence under the Act. The other aspect, namely, acceptance is also very important. There must be clinching evidence with the tacit approval of the accused that money was put by PW 2 on the steel cot as stated by him in his evidence as illegal gratification. In the case in hand, as per the evidence of PW 2 and PW 3, the illegal gratification was in a black rexine bag with a broken zip which was put on a steel cot. As the contents of the bag were not within the knowledge of the accused, therefore, the relevant aspect of the case that the appellant has accepted the illegal gratification as required under Section 7 of the Act is not proved by the prosecution by adducing cogent evidence in this regard."

And also on the point of presumption Hon'ble Apex Court has held paragraph-40 of the said judgment as follows :

> "It is rightly contended by the learned Senior Counsel on behalf of the appellant that the presumption of the guilt is not proved in the case on hand as the prosecution has failed to prove the ingredients of the provision of Section 7 of the Act viz. demand and acceptance of illegal gratification by the appellant to constitute an offence alleged to have committed by him. Therefore, the reliance placed on the evidence of prosecution witnesses i.e. PW 2, PW 3 and others by the respondent's counsel, the relevant portion of which is extracted in the aforesaid portion of the judgment, does not amount to presumption of offence as provided under Section 20 of the Act. Therefore, the question of onus of proof to disprove the presumption did not arise at all on the part of the

appellant."

Similarly, in the case of C.M.Girish Babu (supra) the Hon'ble Apex Court on the crucial question whether the appellant had demanded any amount as gratification to show any official favour and whether the said amount was paid as consideration for showing such official favour, has held in paragraphs 7, 8 and 16 of the judgment as follows :

> "7. In the present case, it may not be really necessary to discuss the entire evidence available on record for the simple reason that the High Court acquitted Accused 1 of all the charges and found no case against him. It is Accused 1 who is stated to have demanded the gratification for clearing and sending the wet grinder to Dubai. The High Court as well as the trial court found that there was no criminal conspiracy between the appellant and Accused 1 and therefore acquitted both of them of the charge under Section 120B IPC.
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> 8. The High Court upon reappreciation of evidence came to the conclusion that the prosecution miserably failed to prove the charge against the appellant for the offence under Section 13(1)(d) read with Section 13(2) of the said Act.
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> 16. The crucial question would be whether the appellant had demanded any amount as gratification to show any official favour and whether the said amount was paid by PW 10 and received by the appellant as consideration for showing such official favour."

Similarly, Hon'ble Apex Court in V. Sejappa's case (supra) has held in paragraphs 19 and 21 of the judgment as follows :

> "19. After referring to Suraj Mal v. State (Delhi Admn.), in C.M. Girish Babu v. CBI, it was held as under : (SCC p. 784, para 18)
> "18. In Suraj Mal v. State (Delhi Admn.), this Court took the view that (at SCC p. 727, para 2) mere

recovery of tainted 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. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe."

21. While dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid was an illegal gratification, reference can be made to the following observation in Mukut Bihari v. State of Rajasthan, wherein it was held as under : (SCC pp. 645-46, para 11)
"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 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 1988 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 all reasonable doubt. However, before 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. 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 and in a proper case the court may look for independent corroboration before convicting the accused person."

29. Learned counsel for the appellant has also cited other decisions but for the sake of brevity, it is not repeated.

30. Learned counsel for the CBI has relied upon several decisions of the Hon'ble Apex Court and relying upon a decision in the case of B. Noha (supra) has submitted that in the said decision it has been by Hon'ble Apex Court that once gratification amount is said to have been passed to the public servant, the burden is upon the public servant to establish that it is not by way of illegal gratification. Similarly, relying upon a decision in R. Sundararajan's case (supra) learned counsel for the CBI has contended that when the accused was caught red-handed while demanding and accepting money as illegal gratification for facilitating permanent telephone connection there is no reason to disagree with the findings of the trial court and punishment awarded. Similarly, relying upon decision in M.W.Mohiuddin's case (supra) learned counsel for CBI has submitted that once an accused comes into possession of the tainted money, only inference is that he has accepted the same and thus obtained the same for pecuniary advantage. Further reliance has also been placed on the decision of Hon'ble Apex Court in Ajit Kumar Vasantlal Zaveri's case (supra) that amount recovered was trusted and the case was fabricated a plea as artificial. Further reliance has been placed in S.

Janardhana Rao's case (supra) and submitted by learned counsel for the CBI that once demand has been made and there is acceptance the conviction is just and proper.

31. In the background of the cited judgments, as stated above, it appears that for establishing a case under Sections 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, demand, acceptance and recovery are most important ingredients and once it is established the conviction is just and proper but what appears from the evidence adduced on behalf of the complainant in the present case does not say so, rather evidence itself shows that licence of wife of the complainant was not renewed after November, 1995 which will appear from the evidence of PW 5 Om Prakash Sinha, who was Deputy Director, National Savings as he has stated that agency of wife of complainant was closed on 5.11.1995 till 22.3.1996, i.e. the date of occurrence, and evidence has also come that in April, 1996 licence was renewed and his evidence further shows that till licence is renewed no bill can be passed and payment could not be made. The aforesaid evidence of PW 5 found further corroboration from the evidence of PW 9, who was retired Director of National Savings and his evidence shows that licence was renewed in April, 1996. The evidence of PW 9 further shows that renewal application was recommended by the Deputy Director and in the case of Ingla Sinha that recommendation has to be made by Moti Prasad

and it is stated that recommendation was made late and for that show cause was asked from Moti Prasad and ultimately licence was renewed in April, 1996. PW 11 was Regional Director of National Savings and he has stated in his evidence that Exts. 2 to 2/2 were the carbon copies of the bills and payment could not be made as such and unless the licence is renewed payment cannot be made. The aforesaid evidence has been brought by prosecution itself and that was corroborated by the evidence of DW 1, who was retired Regional Director of National Savings which clearly shows that carbon copies of the bills were submitted and there was no initial on those bills and further that carbon copies of bills cannot be passed. PW 1 has admitted about pendency of renewal of licence of wife of complainant (PW 7) which she had denied stating ignorance about the same. Evidence further shows that it was renewed in April, 1996 and as such without licence is being renewed no bill can be passed and payment could not be made. In view of the above fact, the genesis of allegation of the complainant that bills were not passed and appellant demanded Rs.1000/- and Rs.200/- per month appears to be not free from reasonable doubt.

32. No doubt, as submitted by learned counsel for the CBI that evidences of PW 2, complainant, in paragraphs-7 and 19 of his evidence, PW 3, verifier, in paragraph-7 and PW 6 in paragraph-6 as well as PW 10 in paragraph-4 show that there was demand by the

appellant and on demand the money was given to the appellant and he counted the notes and kept the same in his pocket and thereafter he was arrested. However, all the above witnesses are either complainant or CBI officials, and they cannot be said to be independent witnesses, whereas PW 6, who claims to be an independent witness, his evidence disclosed that he was a shadow witness in the present case and he has stated in his evidence that he does not recollect as to whether he has been directed to listen talk between the appellant and the complainant and in paragraph-11 of his evidence in cross examination he has stated he was at a distance of 40-45 feet from the tea stall, where they were standing and his further evidence is that he had not seen the complainant in paying money and appellant has accepted the same. PW 8, who is another independent witness, has also stated that he had not seen the accused appellant receiving money from the complainant Braj Nandan Prasad. No doubt, this witness has been declared hostile but PW 6 has not been declared hostile and on perusal of his evidence it appears that this witness has not supported the case of the prosecution so far demand, acceptance and recovery are concerned.

33. Learned counsel for the CBI has relied upon a decision in Kailash Chandra Pandey's case (supra) stating that Hon'ble Apex Court has discussed the similar matter in that case and held in paragraph-10 of the judgment as followed :

> "10. ……It was submitted by learned counsel for the respondent that the bills of the complainant for the

> period in question have already been passed and payments made. That may be so, but this is not a ground to disbelieve the prosecution case. In fact, the objections were raised and deductions were made in bills and money was being demanded from Shri Sengupta so that his bills are not objected or delayed and no deduction be made in future. The money was paid to the accused for the safe passage of his bills. Therefore, nothing turns on this ground that the bills were passed prior to the tendering of the money to the accused. It was only meant to facilitate smooth release of the money as per the bills….."

34. No doubt, every judgment has its own facts and circumstances of the case and in the present case there was no doubt bills of the complainant were pending but no deduction or objection has been raised in those bills, rather the licence of the wife of complainant was not renewed for the period and in such a situation there is no possibility in making any deduction of the amount and objection on the bills.

35. On the other hand, prosecution evidence shows that Moti Prasad was earlier dealing with the matter of passing bills and he was removed by Regional Director and work was assigned to the appellant and the evidence further shows that bill till September, 1995 has been cleared in the month of January, 1996 and thereafter as the licence was not renewed the bills could not be processed and no payment could be made. The evidence further shows that the renewal application was also pending before Moti Prasad and he had delayed in recommending the same and for that he was asked to show cause

and in such a situation submission of learned counsel for the appellant is that at the instance of Moti Prasad the present case has been lodged by the complainant and complainant has not brought any fact on record to show that on 22.3.1996 he approached the appellant for passing of the bills and he demanded money, whereas appellant has already cleared bills till September, 1995 in the month of January, 1996 and later on due to the licence not being renewed the bills could not be passed.

36. From the discussions made above, no doubt there are some evidence regarding the payment of gratification for passing of the bills but at the same time the prosecution evidence itself shows that licence of wife of the complainant was not renewed at the time of making the complaint, i.e., 22.3.1996 and evidence further disclosed that unless licence is renewed the bills would not be processed and payment could not be made. In such a situation, the very genesis of demand appears to be doubtful as there was no occasion for the appellant to demand gratification. No doubt, evidence shows that tainted money has been recovered from the possession of the appellant and while Deeping the hands of the appellant the same became pink in order to show the recovery. PWs 6 and 8, who are independent witnesses, have not supported the allegation of acceptance of money or recovery, rather the evidence of PW 6 shows that some notes were spread on the ground and the evidence of PW 6

also disclosed that he has not seen the complainant paying money and appellant accepting the same and further other independent witness, PW 8 has become hostile as he has also not supported the acceptance of bribe by the appellant. Moreover, so far recovery of amount is concerned, the evidences of PWs are contradictory to each other as evidence of PW 2, complainant, disclosed that CBI official has recovered the amount, whereas PW 12 CBI Inspector, has stated that it was Om Prakash Chaudhary (PW 6) who had recovered the money and PW 6 has not stated so. Apart from the above, it further appears that though the complainant and his wife, PW 2 and PW 7 respectively were knowing the fact that licence of wife of complainant was not renewed and unless the licence is renewed payment could not be made and in spite of that the complaint was lodged on 22.3.1996 which shows the otherwise intention of PWs 2 and 7 and in the background of the fact that Moti Prasad has delayed the application for renewal of licence of PW 7 and for that he has been asked to show cause and the work was earlier assigned to Moti Prasad but the same was taken from him and assigned to the appellant. The above circumstances clearly create a serious doubt about the prosecution case.

37. Further submission of learned counsel for the CBI is that there is evidence of demand and recovery and there shall be presumption under Section 20 of the Act. However, it is well

established by the decision reported in Satvir Singh' case (supra), which has been held in paragraph-40 of the judgment, that –

> "40. It is rightly contended by the learned Senior Counsel on behalf of the appellant that the presumption of the guilt is not proved in the case on hand as the prosecution has failed to prove the ingredients of the provision of Section 7 of the Act viz. demand and acceptance of illegal gratification by the appellant to constitute an offence alleged to have committed by him. Therefore, the reliance placed on the evidence of prosecution witnesses i.e. PW 2, PW 3 and others by the respondent's counsel, the relevant portion of which is extracted in the aforesaid portion of the judgment, does not amount to presumption of offence as provided under Section 20 of the Act. Therefore, the question of onus of proof to disprove the presumption did not arise at all on the part of the appellant."

38. From the entire discussions made above, the admitted position, according to the prosecution case, is that (i) licence of wife of the complainant (PW 7) was not renewed at the time of making the complaint or verification of the complaint and unless it was renewed no payment could be made, (ii) the independent witnesses have not supported the prosecution case so far acceptance or recovery of gratification, as discussed above, (iii) point of recovery is contradictory and the aforesaid circumstances clearly disclosed a reasonable doubt about the prosecution case.

39. It is well settled that prosecution has to prove its case beyond all reasonable doubts, whereas defence has to create a reasonable doubt about the prosecution case and for defence standard of proof is not so as in the case of the prosecution and at best defence

has to prove doubt in prosecution case on the preponderance of probability. In the present case, from the discussions made above, the prosecution has failed to prove its case of demand of bribe, acceptance of same and recovery beyond all reasonable doubts and in such a situation the appellant is entitled to the benefit of doubt.

40. Accordingly, this appeal is allowed. The impugned judgment and order dated 30.5.2003 is set aside. As the appellant is on bail, he is directed to be discharged from the liabilities of his bail bonds.

(Vinod Kumar Sinha, J)

spal/-

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