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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-S-2287-SB-2004 (O&M)
Date of Decision : 25.01.2019**

Ranbir Singh

..... Appellant

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Ashit Malik, Advocate
for the appellant.

Mr. Gaurav Bansal, A.A.G., Haryana.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the judgment dated 27.10.2004 passed by the Special Judge, Faridabad convicting the appellant under Sections 7 and 13 of the Prevention of Corruption Act, 1988 and sentencing him to undergo rigorous imprisonment of three years in case FIR No.320 dated 05.03.2003 registered under Sections 7 and 13 of the Prevention of Corruption Act, 1988.

The case against the appellant was that he had demanded and accepted an amount of Rs.5000/- as illegal gratification from the complainant Mathura Parshad for desisting from demolishing his unauthorized construction.

The main argument raised by the counsel for the appellant is that the complainant had turned hostile and the shadow witness PW-2 Madan Lal (who was none other than a Constable in the police) had deposed that he had not heard the conversation between the appellant and the complainant. He has further argued that the Special Judge erred in convicting the appellant only on the basis of recovery and in presuming that because recovery was there, the demand must have been there. After this first wrong presumption, the Special Court further erred in applying the presumption under Section 20(1) of the Prevention of Corruption Act. As per the counsel, the same could have been invoked only once the demand and acceptance had been proved. He has further argued that the explanation given for the acceptance by the appellant was that the amount in question was recovery on account of fine for having raised unauthorized construction.

Learned Assistant Advocate General has argued that the explanation given by the appellant cannot be believed for the simple reason that the fine amount was Rs.16,000/- while the amount paid was only Rs.5000/-

Be that as it may, the question before the Court is whether the prosecution has been successful in proving the case beyond reasonable doubt. Once the complainant has turned hostile and the shadow witness has admitted that he was at a distance of 20 yards from the complainant and the appellant and thus could not hear anything, in my considered opinion, the approach of the Special Judge in presuming that there must have been a demand and then applying the presumption under Section 20(1) cannot be

sustained.

In this view of the matter, the appeal is allowed. The judgment and order dated 27.10.2004 convicting and sentencing the appellant are set aside.

Since the main case has been decided, the pending Criminal Misc. Application, if any, also stands disposed of.

January 25, 2019
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No