

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl.Appeal No. 792/2003**

Judgment reserved on : 31st January, 2018
Date of decision : 28th May, 2019

STATE THROUGH CBI Appellant

Through: Ms. Rajdipa Behura, SPP for
CBI.

versus

KISHOR KUMAR KANUNGO & OTHERS Respondents

Through: Mr. N.S.Dalal and Ms. Toral
Banerjee, Advocates.

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The State through the CBI vide Criminal M.A. No. 83/2003 sought leave to file the appeal against the impugned judgment dated 24.1.2003 of the learned Special Judge, Delhi in CC No. 32/1993 RC No.50(A)/92/CBI/ACP, New Delhi vide which the three accused arrayed as the respondents herein were acquitted in relation to the charges framed against them of the alleged commission of offences punishable under Section 120-B of the Indian Penal Code, 1860, read with Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 as well as for the substantive offences punishable under Section 17(2) read with Section 13(1)(d) of the said enactment. Vide order dated 2.2.2003 leave to appeal was granted it

having been observed to the effect that it was a trap case and the respondents were allegedly caught red handed accepting the bribe. Thus the appeal was registered as Criminal Appeal No. 792/2003.

2. The Trial Court Record was requisitioned. The appeal was admitted vide order dated 16.8.2004, the respondents put in appearance, surrendered before the High Court and were released on bail on their furnishing personal bond in the sum of Rs.15,000/- with one surety of the like amount to the satisfaction of the Trial Court. The respondent no.1 arrayed to the appeal has expired during the pendency of the appeal as was submitted on 16.3.2011 by the respondents No. 2 and 3 and which factum of demise of the respondent No.1 was submitted on 29.11.2017 on behalf of the State to have been verified as per the reconstructed Trial Court Record that has been received indicating vide the death certificate No. 3934770 putting forth that the respondent No.1 had expired on 4.12.2009.

3. Criminal M. A. 58/2003, the application seeking condonation of delay in filing the appeal was allowed and the delay in institution of the appeal was condoned vide order dated 12.11.2003.

4. The impugned judgment puts forth the facts to the effect that the complainant Qayoom Khan (PW-3), lodged a report EX.PW3/A with the S.P.CBI, on 19.8.1992 claiming to be a resident of H. No. 258-A, Basti Hazrat Nizamuddin, New Delhi. As per the complaint, three plots of land comprised in Khasra No. 107/591, 108/593 and 109/594, Jangpura, Bhogal were in the name of his father late Chand Khan and the matter in relation to the mutation of the said properties in the name of the legal heirs of late Sh.Chand Khan was pending with the Delhi

Development Authority and that though mutation was done in respect of the Plot No. 108/593 and 109/594, the mutation was not done in respect of the third plot No. 107/59. The complainant was alleged to have met one Mr.Gupta working as Naib Tehsildar, Mr.Kishore (A-1) who was working as Kanungo(who has already expired), the accused No.2 i.e. respondent No.2 Jagpal Singh working as Patwari and the accused No.3 Ravinder K. Nagpal working as clerk in the concerned office of the Delhi Development Authority, several times but they did nothing. As per the averments in the complaint, PW-3 the complainant met the Naib Tesildar Mr. Gupta in the presence of the accused Nos. 2 and 3 i.e. the respondents No. 2 and 3 herein in his office on 18.8.1992 when they told him that he would have to spend money and his work would be done and when he, the complainant asked clarifications, the Accused No. 2 i.e. Jagpal Singh told him that he would have to spend Rs.500/- each for himself for A-1 Kishor (since deceased) and for Mr.Gupta at which stage A-3 allegedly intervened to say that he would also charge Rs.500/- and only then he would move the file. The complainant is further alleged to have complained that when he i.e., PW-3 asked Mr.Gupta again, he told him that he should do what he was being told by the others and his work would be done and the complainant is also stated to have alleged that on enquiry as to when the money was to be paid, he was told by them to come to the office on 20.8.1992 at about 2 p.m. with the money.

5. As recorded vide the impugned judgment on the directions of the S.P.CBI, Ex.PW-7/A the FIR Ex.PW-7/B was registered at 1630 hours on 20.8.1992 and the matter was entrusted to Inspector Manjit Singh

(PW-7) for laying of the trap. The trap laying officer (TLO) (PW-7) is stated to have arranged for the trap to be laid and had joined two independent witnesses, *namely*, Sebastian Ekka (PW-4) and Arjun Dev (PW-6) both officials of the MMTC, a public sector undertaking. The complainant had allegedly brought Rs.2000/- in the form of the 20 currency notes of Rs.100 each (Ex.P8 to Ex.P22) and (Ex.P32 to Ex.P36). The number of the said currency notes was recorded in the handing over memo Ex.PW-3/B. The said currency notices were then treated with phenolphthalein powder and demonstration of the use of the said powder was given to the members of the said party and amongst others pre-trap preparations were made including handing over of the said treated notes were given to the complainant with directions that he was to pass them on to the public servants in question on specific demand. PW-4 was deputed to accompany the complainant as shadow witness so as to see the transaction and hear the conversation that was to take place and to give a signal by scratching the hairs on his head by both hands, as soon as the transaction had been completed. Thereafter as per the prosecution version, after the said preparations, the trap party left the CBI office and reached the office of the DDA at Vikas Sadan, New Delhi and the complainant and the shadow witness were sent to make contact with the accused persons, i.e., the respondents whilst the other members of the trap party took position in the vicinity. As per the prosecution version when the complainant met the accused persons, the accused persons/respondents repeated their demand of bribe and received in turn the amount of Rs.500/- each from the hands of the complainant. As per the prosecution version, the accused No. 1 i.e., the

respondent No.1, who has since expired, had received the money in his left hand and had put the money in the last lower right drawer of the table of accused No.2 (A-2)/respondent No.2 from where it was later recovered and A-2 after receiving the money had put the money in the left pocket of his trousers from where it was recovered. A-3 (respondent No.3) is alleged to have received the money in his left hand and put it in the pocket of his trousers from where it was allegedly recovered.

6. As per the prosecution version in the charge sheet, the shadow witness had given the pre-determined signal even before the complainant could tender the money to Mr.D.C. Gupta, Naib Tehsildar. As per the prosecution version, the trap party rushed in on receipt of the signal when the three accused persons were apprehended and recoveries were allegedly effected with the help of the independent witness PW-6. The washes of the hands of the accused persons and of the lining of the pockets of the trousers of A2 and A3 were taken in separate solutions of sodium carbonate each allegedly giving positive confirmation. The TLO is stated to have arrested the three accused and recorded what had been described as recovery memo Ex.PW1/A prepared in the presence of PW1 Shamim Ahmed, who was working as Dy. Director in the same office.

7. Thereafter the trap case was further investigated into by the CBI through Inspector Javed Shiraj (PW-8). After conclusion of investigation, the material was placed before the sanctioning authority PW-2 who granted sanction for prosecution vide order dated 4.11.1992 (Ex.PW2/A) and the charge sheet was filed on 3.2.1993 on which cognizance was taken on 4.2.1993. Charges in relation to the allegations

were framed on 24.9.1993 to which all the accused i.e. the respondents herein pleaded not guilty and thereafter the prosecution examined eight witnesses i.e. PW-1 Shamim Ahmad, PW-2 S.P. Jakhanwal, PW-3 Qayoom Khan, PW-4 Sebestial Ekka, PW-5 N.K.Prasad from CFSL, PW6 Arjun Dev, PW-7 Inspector Manjit Singh, TLO and PW-8 Javed Shiraj.

8. The three accused through their statements under section 313 Code of Criminal Procedure, 1973, denied also having accepted any bribe though they admitted the factum of their employment in the office of the DDA in the aforesaid capacities as stated and also denied that the matter related to mutation of properties.

9. The learned Trial Court, on a consideration of the evidence led, held the entire prosecution version to be wholly doubtful and held that it was unsafe to return a finding that the accused persons had accepted the money from the complainant or that the same had been recovered from their possession or at their instance on the basis of the evidence of the complainant and the TLO.

10. The findings of the learned Trial Court are recorded to the effect:

“10. The statement of the complainant PW3 itself rendered the story of demand of bribe to be of doubtful origin. He would testify that he had met PW1 with regard to the matter of mutation in respect of plot no. 107/591, on the basis of will left behind by his father. He would state that PW1 had advised him to contact the junior officers, who were dealing with the file, whereupon he had met Mr.O.P.Gauri (Asstt. Land Officer cum Settlement Officer), who could not be examined since he died on 12.7.98, as per report received. He would not

clarify as to what transpired in his meeting with Mr. Gauri and would state that he had then Mr.Gupta, Naib Tehsildar and three accused persons . According to him Mr.Gupta had told him that the file was with A-3, whereafter he talked with A-3, who was sitting with A-1& A-2 at that time.

11. As per PW2, in the aforesaid meeting with the three accused persons, A-1 had told him that he would have to spend some amount for getting the mutation cleared and on his enquiry it was A-1, who had told him that he will have to pay rs.500/- each to him, to A-2, A-3 and Mr.Gupta, Naib Tehsildar and that A-1 had told that he would not take out the file unless he was paid some amount. He specifies that his conversation took place on 18.8.92, when A-2 had also told him, interestingly on his own enquiry as to whether he was demanding any money, that he would take Rs.500/-. Above conversation is at total variance from what was reported to CBI in the first place. Interestingly in the complaint Ex.PW3/A the complainant had not even alleged the presence of A-1 in his meeting with A-2 & A-3 and Mr.Gupta, in the office of DDA on 18.8.92. In the complaint he had attributed the first assertion of the demand to Mr. Gupta, Naib Tehsildar and the specific amount to be charged to A-2.

12. PW3 was cross examined at length about the aforesaid material contradiction but he would insist on the version he was narrating in the court. Since this is at variance from what was alleged in the prosecution story and since it amounts to deliberate improvement, apparently with a design to show the presence of A-1 even at the time of initial demand, serious doubts arise about the veracity of PW3.

13. Second most important factor, which punctured the story of initial demand beyond repairs, arises out of certain admissions in the statement of PW3. In cross examination PW3 conceded that while mutation in respect of other two plots had already been done in his favour prior to filing of the complaint his application about the third plot was submitted on 20.10.92. He would plead ignorance about the fact that plot no.107/591 having been mutated in the name of Ram Saran Dass and others. He would state that a litigation was pending on civil side in the Hon'ble High Court respecting the said plot of land. He was confronted with the fact that A-1 had recorded note on 29.1.92 in the file that since the mutation had already been done in the names of Ram Saran Dass and others, party be advised to approach the court.

14. As indicated above in the post trap investigation relevant files of DDA were also seized. The noting to above effect is found recorded at page 14 & 15 in file Ex.PW8/B, one of the files seized. This noting purports to be under the signatures of A-1 confirming the suggestion given to PW3. Interestingly, the Investigating Agency having seized the record had not taken care to even go through the same to examine its import. Had this noting dated 29.1.92 recorded by A-1 been noticed during investigation it would have called for some interrogation of the complainant to find out if his complaint was genuine or motivated. In these circumstances, I am not prepared to brush aside the suggestion given to PW3 by the defence that he was aware of the noting dated 29.1.92 and had felt annoyed as a result. It is apparent that the matter of mutation of the third plot of land was held up on account of litigation pending between the complainant on one hand and certain other claimants of rights in the said plot of land.

15. The complainant in the course of his statement would concede certain criminal back ground on his party.

He would admit that he had faced prosecution in cases of grievous hurt, attempt to commit culpable homicide, rioting, house trespass and criminal intimidation. This background does not add to his veracity and rather compels one to take his word with a pinch of salt.

16. The version about what transpired during the trap in the office of DDA also does not come out consistently in the course of prosecution evidence. PW3 would testify that when he accompanied by shadow witness had gone into the office of DDA he found A-1, A-2 and A-3 sitting in room no.16, According to him Naib Tehsildar Mr.Gupta was also present. As per him the tables of A-1 and A-2 were lying side by side and when he had told A-1 that he had come in respect of the work of mutation, A-1 had asked him as to whether he had brought the money, in response to which he had told him in affirmative but had demanded his file to be taken out. He would state that A-1 had then taken out the file, placed it on the table and told him to notice as to how fast his file had been taken out and that he should pay the money. He would depose that A-3 had come to the seat of A-1 and told him to notice as to how fast his work was being done and that he should immediately hand over the money. PW3 states that he then told them that he would give the money and then had taken out the tainted money from his pocket and gave one bundle to A-1, and the other to A-2. According to him, A-1 took the money and put it in the bottom drawer of the table of A-2, while A-2 took money and put it in the right side pocket of his trousers. As per his version A-3 thereafter had demanded his share on which he had taken out the third bundle and given it to him. He would state A-3 took the money, counted it with both hands and then started towards exit, while putting the notes in the pocket of his trousers.

17. PW4 does try to corroborate but came out with a version which does not jell well with the sequence narrated by PW3. According to him A-1 had taken out

the file and had told the complainant that his work was being done and he should do his (accused's) work, in response to which the complainant had uttered words to the effect that as to why he was worrying and since the "Sahib" had called him he would "give". Apparently these utterances are on different lines than what has been said by PW3. It is not clarified as to which "Sahib" PW4 was referring to. He testified that A-1 had received the amount with left hand and put it in the drawer of the table of A-2. According to him, A-3 had then received the money with left hand and after counting it put it in the left side pocket of his trousers. He would make A-2, unlike the statement of PW3, the last recipient of the money using his right hand though mentioning he also having counted the money with both hands.

18. Not only the sequence was changed by PW4 but even the utterances attributed are entirely on different lines.

19. If A-1 had received the money in his left hand and had immediately put it in the drawer of office table, there would be no need for washes of his both hands being taken and yet PW3 testified that washes of both hands of A-1 were taken, each turning pink in colour. PW4 on the other hand creates further doubt by stating that washes of left hand of A-3 and of right hand of A-2 were taken in separate solutions. He would not talk during his examination in chief, of washes of right hand of A-3 or left hand of A-2. Undoubtedly he would confirm the prosecution case in above respect when declared hostile but when this fact was suggested to him during cross examination by the learned prosecutor.

20. Since the money was not recovered from A-1, it was incumbent upon the prosecution to prove as to in whose office table money was found lying. No proper evidence has been led in this regard as witnesses did not seem to be aware or sure as to which official was sitting on which table. The confusion is further confounded by PW4, who

would state that even Naib Tehsildar Mr.Gupta was arrested and documents in this respect were prepared and signed by the head of the office. Learned prosecutor claimed that no such proceedings had been recorded. But then, this statement coming from the prosecution's own witness cannot be brushed aside, possibility cannot be ruled out that even the Naib Tehsildar was arrested but his arrest was not shown. This possibility gives rise to serious question mark about the extent of truth in the prosecution case.

21. The fact of recovery of the money from the pockets of the trousers of A-2 & A-3 and from the drawer of the table of A-2 was attributed to PW-6. As per prosecution case this was done in the presence of PW1, who is also shown by the recovery memo to have been present, even at the stage when washes were taken. Both these witnesses however, refute such role on their respective part. PW6 the independent witness taken along from the CBI office stated that when he was taken into the office room A-1, A-2 & A-3 had already been apprehended and he was told that they had been arrested in bribe case. He would state CBI officials were holding some currency notes and he was told the same had been recovered. He was declared hostile and cross examined by the learned prosecutor but nothing could be brought out as could render his statement to above of fact, during examination in chief, a deliberate lie on his part. Similarly PW1 would also state that when he was called by the CBI officials to the room in question he was told that search was to be taken but he had returned to the office room and when he returned after about 1 ½ hours he was told that the accused persons had been arrested. He saw them standing with their hands up and glass lying on the table, whereupon he had returned and later his signatures having been taken on the recovery memo. He was also declared hostile and cross examined but would not budge from the above version.

22. In the above facts and circumstances, I find it highly unsafe to return a finding that the accused persons had accepted the money from the complainant or that the same came to be recovered from their possession or at their instance, on the basis of evidence of complainant and the TLO.

23. Benefit of doubts arising as a result must go to the accused. They are acquitted. Their bail bonds are discharged. File be consigned to record room.”

11. The State through its appeal has submitted that the learned Trial Court had made a wrong comprehension of the evidence and had not properly evaluated the evidence of PW-3 nor of PW-4 in respect of the demand and acceptance of the recovery of bribe money. It was further submitted by the State that PW-3 the complainant had proved the pre-trap proceedings and submission of the written complaint Ex.PW3/A with the CBI on 19. 8.1992 and of his having joined the trap on 20.8.1992 and having visited the office of the accused at Vikas Sadan, DDA, along with PW-4, Sebastian Ekka, the shadow witness. It was also submitted by the State that the conversation in Hindi clearly revealed that A1, A2 and A3 had categorically demanded and accepted Rs.500/- each from the complainant and the PW-4 had given a signal to the trap party and all the accused were caught red handed. The State through the CBI further submits that the trap money was recovered from the possession of all the accused persons in the presence of PW-6 Arjun Dev. However, it is essential to observe that the State has stated that PW-6, the punch witness and PW-1 Shamim Ahmad, the Dy. Director of the DDA, had turned hostile and had not supported the prosecution version. PW-1 is the stated recovery witness from the DDA office and

PW-6 is the independent recovery witness taken from the MMTC office and as observed vide paragraph 21 of the impugned judgment, as already reflected hereinabove, all these witnesses have refuted the recoveries of the stated bribe money having been effected in their presence though PW-6 stated that when he was taken into the office room A-1(respondent No.1), A-2(respondent No.2) and A-3 (respondent No.3) had already been apprehended and he was told that they had been arrested in the bribe case and the CBI officials were holding some currency notes and he was told that the same had been recovered. Though the cross-examination of this witness on behalf of the State was also conducted but he did not aid the prosecution version.

12. Likewise PW-1, the witness from the office of the DDA, stated that he was called by the CBI in the room. He stated that when he reached the room, he was told that the accused persons had been arrested and he saw them standing with their hands up and glass was lying on the table whereafter he had returned and later his signatures were taken on the recovery memo. This witness despite having been cross-examined on behalf of the State, CBI, did not corroborate the prosecution version at all.

13. Reliance was placed on behalf of the appellant, the CBI, on the verdict of the Hon'ble Supreme Court in ***Guru Singh v. State of Rajasthan***; AIR 2001 S.C. 330, to contend that the Court could rely upon the part of the testimony of the witness if the deposition was found to be credit worthy and it is further essential to consider in each case whether in the result of such cross-examination and contradiction the witness stands discredited or is believable. The CBI has further

contended that there is evidence on the record regarding passing of the currency notes from the complainant to the accused/ respondents accompanied by the conversation in this behalf, which was heard by the shadow witness and there is no material discrepancy with regard to the place and the manner in which the bribe was offered to the accused/respondents and accepted by them. It has been submitted on behalf of the CBI that the voluntary acceptance of money was proved by the complainant and the shadow witness and thus that the testimonies of the prosecution witnesses that the accused demanded the bribe cannot be disbelieved as their evidence was corroborated by the fact of acceptance of bribe by the accused persons.

14. The CBI also placed reliance on the provision of Section 20 of the Prevention of Corruption Act, 1988 which reads to the effect:

“20. Presumption where public servant accepts gratification other than legal remuneration.—

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause(a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration)

or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.”,

to contend that in as much as the bribe money was recovered from the accused persons, the burden shifts on them to explain the circumstances to prove their innocence and reliance in relation thereto was placed on behalf of the CBI on the verdict of the Hon'ble Supreme Court in the case ***M.Narsingha Rao v. State of Andhra Pradesh***; AIR-2001 SC 318 submitting to the effect that where receipt of gratification was proved the Court was under a legal obligation to presume that such gratification was accepted as a reward for doing public duty.

15. Respondents No. 2 and 3 through their written submissions that have been submitted on their behalf reiterated that they were innocent and had been falsely implicated and that there was no infirmity whatever in the impugned judgment and that the testimonies of the prosecution witnesses were wholly infirm and had not brought forth the factum of allegations made through the charge framed against them of having demanded any bribe or having received any bribe money from the complainant.

16. It has been submitted on behalf of the respondents No. 2 and 3 that the admission of illegal gratification having not been proved, the accused/ respondents could not have been convicted. It has also been submitted on behalf of the respondents that the improbability of the prosecution version is brought forth from the factum that the averments made in the FIR are different from the version put forth by the witnesses through their statements made in the Court. It has thus been submitted on behalf of the respondents that there is no infirmity in the impugned judgment.

17. Reliance was also placed on behalf of the respondent Nos. 2 and 3 on the verdict of the Supreme Court in ***T.K.Ramesh Kumar v. State through Police Inspector, Bangalore***; (2015) 15 SCC 629, to contend that the demand of illegal gratification having not been established and likewise, the recovery of the allegedly treated money also having not been established, the respondents have been rightly acquitted by the learned Trial Court. Reliance was also placed on ***B.Jayaraj v. State of Andhra Pradesh***,; (2014) 13 SCC 55 to submit that in the instant case there was no proof of illegal gratification, much less was there any proof of the demand and thus in the absence of the same, the legal presumption under Section 20 of the Prevention of Corruption Act, 1988 cannot be drawn and has rightly not been drawn. Reliance was also placed on behalf of the respondent on the verdict of the High Court of Gujarat in ***Ramanbhai Ashabhai Chauhan v. State of Gujarat***; 2015 CrL.L.J. 3812, to contend that in view of the testimonies of PW-1 and PW-6, who have categorically stated that no recoveries were effected in their presence, the alleged recovery of the bribe money from the respondent

at their behest cannot be held to have been established even beyond a reasonable doubt and much less to the hilt.

ANALYSIS

18. At the outset, it is essential to observe that though the Trial Court Record was though requisitioned in the instant case, the same has been received in the re-constructed form and as indicated vide proceedings dated 24.11.2011 of the learned Special Judge the Trial Court Record has been reconstructed to the extent that it could be reconstructed in as much as the statements of the prosecution witnesses examined in Court, the statements under Section 313 of the Cr.P.C. of the accused and statements of the defence witnesses are not available on the reconstructed record in as much as they were not available with the CBI as well. No further reconstruction of the record has been conducted thereafter as learnt through information received on 27.05.2019 from the learned trial Court vide letter No.128-B dated 27.05.2019.

19. Be that as it may, this Court thus can now only consider the submissions that have been made on behalf of either side on the basis of the analysis and reproduction to the extent made by the learned trial Court vide the impugned judgment dated 24.01.2003 as also the assertions that have been made by the appellant through its appeal in relation to the statements of the witnesses.

20. It is further essential to observe that though it is undoubtedly true that as contended on behalf of the appellant whilst placing reliance on the verdict of the Hon'ble Supreme Court in ***Gura Singh Vs. The State of Rajasthan (supra)*** that even if a witness has not completely supported the prosecution version, nevertheless the entire testimony of

the said witnesses cannot be discredited and can still be believed in relation to the part of the testimony of the witnesses to the extent that it is found creditworthy, it is further essential to observe that the same has to be read as a relative effect on the testimony and essentially corroboration of the said testimony is required through the testimony of other reliable witnesses as has been laid down by the Hon'ble Supreme Court in ***Attar Singh vs. State of Maharashtra 2013I AD (SC) 92*** wherein it has been observed vide para 13 of the said verdict to the effect:

“13. We have meticulously considered the arguments advanced on this vital aspect of the matter on which the conviction and sentence imposed on the appellant is based. This compels us to consider as to whether the conviction and sentence recorded on the basis of the testimony of the witness who has been declared hostile could be relied upon for recording conviction of the accused-appellant. But it was difficult to overlook the relevance and value of the evidence of even a hostile witness while considering as to what extent their evidence could be allowed to be relied upon and used by the prosecution. It could not be ignored that when a witness is declared hostile and when his testimony is not shaken on material points in the cross-examination, there is no ground to reject his testimony in toto as it is well-settled by a catena of decisions that the Court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard the same in toto and can be relied upon partly. If some portion of the statement of the hostile witness inspires confidence, it can be relied upon. He cannot be thrown out as wholly unreliable. This was the view expressed by this court in the case of Syed Akbar vs. State of Karnataka reported in AIR 1979 SC 1848 whereby the learned Judges of the

Supreme Court reversed the judgment of the Karnataka High Court which had discarded the evidence of a hostile witness in its entirety. Similarly, other High Courts in the matter of Gulshan Kumar vs. State (1993) Crl.L.J. 1525 as also Kunwar vs. State of U.P. (1993) Crl.L.J. 3421 as also Haneefa vs. State (1993) Crl.L.J. 2125 have held that it is not necessary to discard the evidence of the hostile witness in toto and can be relied upon partly. So also, in the matter of State of U.P. vs. Chet Ram reported in AIR 1989 SC 1543 = (1989) Crl.L.J. 1785; it was held that if some portion of the statement of the hostile witness inspires confidence it can be relied upon and the witness cannot be termed as wholly unreliable. It was further categorically held in the case of Shatrughan vs. State of M.P. (1993) Crl.L.J. 3120 that hostile witness is not necessarily a false witness. Granting of a permission by the Court to cross-examine his own witness does not amount to adjudication by the Court as to the veracity of a witness. It only means a declaration that the witness is adverse or unfriendly to the party calling him and not that the witness is untruthful. This was the view expressed by this Court in the matter of Sat Paul vs. Delhi Administration AIR 1976 SC 294. Thus, merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the Court must see the relative effect of his testimony. If the evidence of a hostile witness is corroborated by other evidence, there is no legal bar to convict the accused. Thus testimony of a hostile witness is acceptable to the extent it is corroborated by that of a reliable witness. It is, therefore, open to the Court to consider the evidence and there is no objection to a part of that evidence being made use of in support of the prosecution or in support of the accused.

21. It is undoubtedly equally true in view of the verdict of the Hon'ble Supreme Court in ***M. Narsinga Rao vs. State of Andhra***

Pradesh (supra) and **B. Hanumantha Rao vs. State of Andhra Pradesh (Supra)** in terms of Section 20(1) of the Prevention of Corruption Act, 1988 if it is in any trial of an offence punishable under Section 7 or Section 11 or Clause (a) or Clause (b) of sub-section (1) of Section 13 if it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification other than legal remuneration or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate. It cannot however be overlooked that it has to be essentially observed that the factum of the acceptance or obtaining or agreement by the accused to accept or to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person has to be proved at trial and the mandatory presumption as in *terrarium* i.e. in tone of a command as held in **M. Narsinga Rao (supra)** can thus be put into play only if the condition for drawing such a legal presumption under Section 20 is established as laid down vide para 14 thereof of the said verdict which reads to the effect:

“14. When the sub-section deals with legal presumption it is to be understood as in terrarium i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or

forbearing to do any official act etc., if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act.”

22. It is equally true that as observed by the Hon’ble Supreme Court in para 15 of the said verdict, the word ‘**proof**’ needs to be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence and that the ‘**proof**’ of the facts depends upon the degree of probability of its having existed and that ‘**proof**’ does not mean proof to rigid mathematical demonstration, because that is impossible and must mean such evidence as would induce a reasonable man to come to a particular conclusion as held in ***Fletcher Moulton L.J. in Hawkins vs. Powells Tillery Steam Coal Company Ltd. 1911 (1) KB 988*** referred to with approval in para 15 of the verdict in ***M. Narsinga Rao (supra)***. The observations in paras 15, 16 & 17 of the said verdict read to the effect:

“15. The word proof need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or

consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word proved in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him.

Fletcher Moulton L.J. in Hawkins vs. Powells Tillery Steam Coal Company, Ltd. [1911 (1) K.B. 988] observed like this:

Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion.

16. The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business vis-à-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act.

17. Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar

circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later.

Presumption in Law of Evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the court can draw an inference and that would remain until such inference is either disproved or dispelled.”

23. The verdict of the Hon’ble Supreme Court in ***C.K. Damodaran Nair Vs. Govt. of India***; AIR 1997 S.C. 551, relied upon on behalf of the appellant would aid the appellant only in the event of it being concluded that the recovery of the alleged tainted bribe money having been effected from the accused persons/respondents herein as observed hereinabove, the statements of witnesses recorded during trial are not available despite all efforts made by the District Courts for retrieval of the same even through reconstruction and are not available with the CBI authorities.

24. In the circumstances, the observations that are made by the learned trial Court in relation to the testimonies of the 18 prosecution witnesses examined have to be read as put forth in the impugned judgment.

25. Taking the same into account, it is brought forth that a very material aspect of the prosecution version which relates to the aspect that the entire commission of the offence was in relation to the mutation to be effected on the records of the Delhi Development Authority in relation to Plot No.107/591 situated at Jungpura, Bhogal, New Delhi which the complainant Qayum Khan claimed was in his father’s name and on the demise of his father were to be mutated to the names of the legal heirs apart from the mutation in relation to the plots bearing

nos.108/593 & 109/594 similarly situated. As observed elsewhere hereinabove, mutation in relation to plot nos.108/593 & 109/594 had already been effected. Para 13 of the impugned verdict already reproduced elsewhere hereinabove clearly depicts that mutation of the plots bearing nos. 108/593 & 109/594, Jungapura, Bhogal had already been effected in the name of the complainant Qayum Khan even before he lodged his complaint in relation to the third plot i.e. 107/591 which was submitted on 20.10.1992.

26. Strangely, the incident alleged in the instant case of the trap having been laid is of the date 20.08.1992. The complainant had pleaded ignorance about the facts that the plot in question bearing no.107/591 had been mutated in the names of Ram Saran Das and others and stated that a litigation was pending on the civil side in this Court in relation to the said plot of land and had thus also been confronted during cross examination of the accused no.1 (since deceased) having recorded a note on 29.01.1992 in the file that since mutation had already been done in the names of Ram Saran Das and others, the party be advised to approach the Court. Apparently, the complainant has to be presumed to have had knowledge of the factum of there being a dispute in relation to the mutation of the plot bearing no.107/591 in his name in as much as it had already been mutated in the name of Ram Saran Das and others in relation to which civil litigation was pending in this Court and the accused no.1 had recorded a note on 29.01.1992 much prior to the incident alleged in the instant case which took place on 20.08.1992 and that the party be advised to approach the Court.

27. It has thus rightly been observed by the learned trial Court to the effect that this aspect punctures the story of initial demand beyond repairs which arises out of the admissions made in the statement of PW-3, the complainant. The learned trial Court has categorically observed vide para 14 of the impugned judgment to the effect as rightly observed that this noting dated 29.01.1992 on the file of the DDA recorded at pages 14 & 15 of the file Ex.PW8/B which file had been seized was under the signatures of accused no.1 (since deceased) confirming the suggestion given to PW-3 that accused no.1 had recorded the note on 29.01.1992 that since the mutation had already been in the name of Ram Saran Dass, the parties be advised to approach the Court and that the Investigating Agency had not taken care despite seizure of the said record to go through the same to examine its import and that if this noting dated 29.01.1992 recorded by accused no.1 had been noticed during investigation, it would have called for some interrogation of the complainant to find out if the complaint was genuine or motivated and that the learned trial Court rightly held that in these circumstances, it was not prepared to brush aside the suggestion given to PW-3 by the defence that he was aware of the noting dated 29.01.1992 and felt annoyed as a result.

28. The learned trial Court has also rightly observed vide para 14 of the impugned judgment that the matter of mutation of the third plot of land was held up on account of litigation pending between the complainant on one hand and certain other claimants of rights in the said plot of land.

29. The analysis of the evidence made in paras 16, 17, 18, 19, 20, 21, 22 & 23 of the evidence of the prosecution witnesses which paragraphs had already been reproduced elsewhere hereinabove bring forth the complete inconsistency in the alleged occurrence of the incident. In the circumstances that PW-1, the Deputy Director of the DDA and PW-6, the independent panch witness, both have not corroborated the prosecution version in relation to the recoveries of the tainted money allegedly recovered from the accused persons, the recovery of tainted money from the three accused persons does not stand proved. Merely because, the witnesses have been cross examined on behalf of the CBI *per se* does not suffice to bring forth that their testimonies vide which they stated that the recoveries of the tainted money were not effected in their presence were not true. Rather, the testimonies of these two witnesses are categorical that no searches and no recoveries were effected from the residence in their presence.

30. The impugned judgment indicates that PW-4 Mr. Sabastian Ekka, the shadow witness had stated that even the Naib Tehsildar, Mr. Gupta had been arrested in the instant case and documents were prepared and signed by the head of the office but the CBI through its learned prosecutor claimed that no such proceedings had been recorded. In these circumstances, the observations in para 20 of the impugned verdict that in view of this statement of the prosecutrix witness, the possibility of the Naib Tehsildar having been arrested with his arrest not having been shown cannot be ruled out and that that raises a serious question mark about the extent of truth in the prosecution case, cannot be faulted with and suffices to render the prosecution version wholly

doubtful in the circumstances of the case, in as much as the recoveries of the tainted money from the respondents cannot be held to have been established beyond a reasonable doubt and much less to the hilt. Thus, the requisite presumption under Section 20 (1) of the Prevention of Corruption Act, 1988 cannot be drawn in the instant case.

CONCLUSION

31. The impugned judgment, in the circumstances, calls for no interference. The appeal is dismissed.

32. The bail bonds and surety bonds of the respondent nos.2 & 3 are discharged. The appeal against the respondent No.1 due to his demise abates.

MAY 28th, 2019
sv/vm

ANU MALHOTRA, J.