

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPEAL NO. 44 OF 2014**

Shri Pradeep H. Harwalkar,
Son of Harichandra Laximan Harwalkar,
Aged 48 years, Indian National,
Junior Passenger Assistant,
Konkan Railway Corporation Ltd.,
Resident of Manasbagh Wada,
Mulgao, Bicholim Goa. Appellant

Versus

State/CBI/ACB/GOA
Bambolim Goa. Respondent

Mr. Shivan Desai, Advocate for the Appellant.

Mr. Mahesh Amonkar, Special Public Prosecutor for the Respondent.

Coram:- M. S. SONAK, J.

Reserved on: 29th October 2020

Pronounced on: 5th November, 2020

JUDGMENT

Heard Mr. Shivan Desai, learned counsel for the Appellant and Mr. Mahesh Amonkar, learned Special Public Prosecutor for the Respondent/State/CBI.

2. This appeal questions the judgment and order dated 9th July 2014 in Special Case No.15/2013/T (Special Case No.2/2010 (old) made by the Special Court for CBI in Goa at Mapusa, convicting the Appellant- Accused under Section 7 and Section 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 (the said Act) and sentencing him

to undergo simple imprisonment for one year for each of the offences and fine of ₹1000/- or in default to undergo simple imprisonment for one month.

3. The prosecution case is that on 29th December 2009 at around 22.05 hours the accused while functioning as a Junior Passenger Assistant in Konkan Railway Corporation Limited being a public servant demanded a bribe of ₹150/- from P. G. Naik, PC, CBI/ACB Goa at Margao Railway Station for facilitating him and two other passengers to travel in the Sleeper Class of train No.0112, UP Konkan Kanya express against the current ticket purchased by Naik for the journey from Margao to Ratnagiri by not charging any deferential amount for the journey and thereby committed offence punishable under Section 7 of the said Act.

4. It is further the case of the prosecution that on the same date, time, and place, the accused accepted the amount of ₹150/- towards his illegal demand from P. G. Naik, thereby abusing his position as a public servant and obtaining for himself a pecuniary advantage thereby committed offence punishable under Section 13(1)(d)(ii) and Section 13(2) of the said Act.

5. The charge was framed against the accused on 30th April 2011 to which the accused did not plead guilty. Accordingly, the trial ensued in which, the prosecution examined seven witnesses. Thereafter, the accused was questioned under Section 313 of Cr. P.C., in which he

denied the prosecution case. However, neither did the accused examine himself nor lead any defence evidence in this matter.

6. By the aforesaid impugned judgment and order dated 9th July 2014, the learned Special Judge convicted and sentenced the accused. Therefore, this appeal.

7. Mr. Shivan Desai, learned counsel for the Accused submits that the prosecution, in this case, has failed to prove beyond a reasonable doubt the commission of offence under Section 7 and Section 13(1)(d)(ii) of the said Act by the accused. He submits that the FIR registered against the accused was false and in any case, the same was not at all proved by the prosecution. He submits that there is absolutely no evidence on the aspect of demand. He relies on ***Mukhtiar Singh (since deceased) through his legal representatives Vs State of Punjab***,¹ to submit that before the presumption under Section 20 of the said Act can be raised in such matters, the prosecution has to prove beyond a reasonable doubt that the demand for illegal gratification was made by the accused person.

8. Mr. Desai points out that though it is the case of the prosecution that the demand for illegal gratification was made at the Margao Railway Station from P. G. Naik (PW2) between 17.40 hours and 17.50 hours within the hearing distance from two panchas. However, one of the panchas examined by the prosecution denied any knowledge about the conversation between PW2 and the accused. The

¹ 2017(8) SCC 136

second Pancha was not even examined by the prosecution. Based on this Mr. Desai submits that the prosecution has failed to prove beyond a reasonable doubt the alleged demand made by the accused between 17.40 hours and 17.50 hours at Margao Railway Station. He submits that the very foundation of the prosecution case therefore collapses and the impugned judgment and order deserves to be interfered with.

9. Mr. Desai without prejudice to the aforesaid submits that the prosecution in the present case has failed to establish the so-called second demand for illegal gratification by the accused on board the train. He points out that PW2, decoy witness has deposed that the conversation between him and the accused lasted for about 15 minutes and was in Konkani. He however points out that the transcript of the conversation relied upon by the prosecution though itself doubtful reveals the conversation in Hindi. Mr. Desai submits that this is a serious discrepancy that casts a doubt on the prosecution version in this matter.

10. Mr. Desai submits that even the PW1, so-called independent Pancha deposed that the conversation between the accused and PW2 was in Hindi. The prosecution failed to examine the second so-called independent Pancha, for which adverse inference is due against the prosecution. Mr. Desai submits that based upon such a contradictory version, the prosecution cannot be said to have been proved beyond a reasonable doubt the second demand onboard the train. Mr. Desai submits that for these reasons as well the impugned judgment and order deserves to be set aside.

11. Mr. Desai then submits that this is a case of an illegitimate trap and therefore, the evidence in respect of such trap is liable to be discarded in its entirety or any case evaluated with extreme caution. He points out that there was no specific complaint against the accused and the evidence on record clearly shows the trappers attempted to deliberately trap the accused into allegedly accepting illegal gratification. He points out that even the unreliable and sketchy evidence on record does not even suggest any demand for a bribe/illegal gratification by the accused. He relies on *Shridhar Chavan vs The State of Maharashtra*,² to submit that such practice has been deprecated by this Court and the evidence of trap party ought not to be accepted.

12. Mr. Desai then refers to the transcript of the recorded conversation and points out that no sample of PW2 was ever forwarded to the forensic expert and therefore, the report of the forensic expert is quite valueless. Without prejudice, he submits that even if the report is to be considered, the transcript establishes that this was an illegitimate trap and there was no demand made by the accused of any illegal gratification.

13. Mr. Desai submits that rather, the transcript suggests that the accused was lured into and trapped by PW2 into acceptance of this gratification of ₹150/-. He relies on *Dinkar Bapurao Deokar & Others v/s The State of Maharashtra*,³ to submit that the evidence from such illegitimate or chance trap is extremely doubtful and no

² 2015 SCC OnLine Bom.5057

³ 2016(2) Bom. C.R. (Cri) 359

conviction can be based on the same.

14. Mr. Desai submits that in the present case the prosecution has failed to prove beyond reasonable doubt the pre-trap and post-trap panchanama and therefore, there is no legal evidence on record to establish the recovery of ₹150/- from the person of the accused. He points out that none of the witnesses deposed to carrying a printer with them. Yet panchanamas are computer printed. This is a major lacuna in the prosecution version that one of the panchanamas was prepared onboard the train and the other at Rajapur Railway Station. This serious discrepancy renders the prosecution version extremely doubtful.

15. Mr. Desai submits that in this case Sub-Inspector Sunil Nair, HC Ramesh Kumar, and PC Anand Kolamkar were alleged to have played a crucial role in pre-trap and post-trap were never examined by the prosecution. This calls for an adverse inference in the matter. PW1 deposed that Ramesh Kumar purchased tickets for the trap party. However, these tickets were never attached or produced in evidence. This renders the very presence of PW6, PW7 as well as three unexamined witnesses extremely doubtful at the trap. Necessary entries regard the trap are not found in the general diary at the CBI office. All this renders the prosecution version extremely doubtful and no conviction could have been based on the same. Mr. Desai submits that the testimony of PW4 is inconsistent and possibility of plant of phenolphthalein on the accused cannot be ruled out. Further, the circumstances under which the presence of pancha witnesses PW1 and

one Pradeep Naik was secured are extremely doubtful. The investigation in this case by PW6 was not proper and in fairness of objectivity. For all these reasons, the impugned judgment and order is required to be set aside.

16. Finally, Mr. Desai submits that the learned Special Judge incorrectly raised presumption under Section 20 of the said Act. He points out that before any such presumption is raised, the prosecution was duty-bound to prove beyond a reasonable doubt the demand for illegal gratification by the accused which the prosecution had failed. In any case, even assuming that this was proved, there is ample evidence on record that rebuts the onus which allegedly shifted on the accused in the present matter. He submits that this aspect was not at all considered by the learned Special Court and therefore the impugned judgment and order warrants interference. He relies on *C. M. Girish Babu Vs CBI*⁴, *B. Jayaraj Vs State of AP*,⁵ *P. Satyanarayana Murthy Vs District Inspector of Police, State of Andhra and another*⁶, *A. Subair Vs State of Kerala*⁷ in support of his contentions.

17. Mr. Amonkar, learned Public Prosecutor defends the impugned judgment and order based on the reasonings reflected therein. He submits that in this case, the prosecution has proved the charges against the accused beyond a reasonable doubt. He submits that some minor discrepancies here and there do not detract from the grain

⁴ 2009 (3) SCC 779

⁵ 2014(13) SCC 55,

⁶ 2015(10) SCC 152,

⁷ 2009 (6) 587

of the matter and therefore, ought not to be the basis for creating doubt on the prosecution version. There is no legal embargo to lay a trap in such matters and the testimony of the witnesses to the trap can never be regarded as tainted testimony. He submits that this is not the import of the judgments relied upon by Mr. Desai in this matter. He submits that the decision in *Shridhar Chavan (supra)* and *Dinkar Bapurao Deokar (supra)* turn on their facts which are not even remotely comparable to the facts in the present matter. He submits that in this case not only the demand for illegal gratification made by the accused proved beyond a reasonable doubt but further, the prosecution has established, again beyond the reasonable doubt that the amount of ₹150/- by way of illegal gratification was accepted by the accused. For all these reasons, Mr. Amonkar submits that this appeal may be dismissed.

18. Mr. Amonkar submits that the learned Special Judge quite correctly raised the presumption under Section 20 of the said Act in this matter. He submits that the accused neither raised any defence in the course of his statement under Section 313 of Cr. P.C., nor did he examine himself. He submits that the accused in this matter merely went about denying practically everything and such denials are hardly sufficient to rebut the onus even by the test of preponderance of probabilities. He submits that no doubt arises from the evidence on record and therefore, the accused, ought not to be extended any benefit of such non-existing doubt. Again, for this reason, as well he submits that this appeal may be dismissed.

19. The rival contentions now fall for my determination.

20. In this case, the charges alleged that on 29th December 2009 at about 22.05 hours, the accused demanded a bribe of ₹150/- from PW2 for facilitating him and two other passengers to travel in the Sleeper Class of train No.0112 against current tickets purchased by PW2 for the journey from Margao to Ratnagiri by not charging any differential amount. The charges then allege that on the same date, place, and time, the accused in pursuance of this demand made at around 22.05 hours accepted the amount of ₹150/- from PW2 for allotting them berths in the Sleeper Coach.

21. In support of this specific charge, the prosecution examined seven witnesses. The crucial witnesses naturally are PW2 the decoy from whom the accused demanded illegal gratification and who paid the illegal gratification to the accused and PW1, an officer in the State Bank of India who witnessed all this, in his capacity as one of the Pancha witnesses.

22. The learned Special Judge, in this case, has analyzed and marshaled the evidence of PW1 and PW2 and there is according to me no scope for disagreeing with the conclusion of the learned Special Judge. However, this being a criminal appeal, the evidence of PW1 and PW2, amongst other prosecution witnesses has been independently evaluated by me. This time, keeping in mind the caution that this being a trap case, the testimony of the witnesses to the trap is required to be

evaluated with utmost circumspection and strict scrutiny, before the same is accepted.

23. PW2 has deposed that as directed by the accused, PW2 and the two Pancha witnesses, after having purchased current tickets for travel from Margao to Ratnagiri boarded the train and occupied berth No.44 in Coach S-5. This witness clarified that the accused had told him to sit on berth Nos.49, 50, and 51 but since some ladies were sitting on these berths, PW2 and two Pancha witnesses occupied berth No.44.

24. PW2 has deposed in great detail about the preparation which was made to lay a trap. This includes not just the paperwork but also arranging the marked notes, chemicals like phenolphthalein, sodium carbonate etc. He has deposed not only to the denomination of the notes but also their numbers. He has deposed to the instructions given to him about the actual trap. He has deposed to carrying a digital recorder and how he was told to record the conversation with the accused.

25. PW2 has deposed that at around 10.00 p.m. when the train had crossed Vaibhavadi they saw the accused coming from Coach S-6 to S-5. PW2 has then deposed that the accused then informed him the difference between the Sleeper Class ticket and current ticket fare comes to ₹264/- and that he demanded ₹150/- if PW2 and two others were to be allowed to travel from Margao to Ratnagiri without paying the

differential amount.

26. PW2 then deposed that he removed ₹150/- which was kept in his left side shirt pocket by his right hand and handed it over to the accused. He deposed that the accused accepted the same in his right hand, counted the money with both his hands and inserted the money in his lower left pocket of the coat. He deposed that even the Pancha witnesses witnessed this interaction/transaction. PW2 then deposed that he gave his prearranged signal by wiping his face with hand and on noticing this signal PI Rishi along with other police officials reached the spot. PW2 deposed that they inquired him as to who has accepted the money from him after making the demand. PW2 then pointed out towards the accused, whose movements were then restricted. PW2 then deposed that at around 10.25 p.m., the train reached Rajapur Railway Station and they all got down at this station. At this point, the accused inquired with PI Rishi that he can collect his briefcase which was kept at berth no.9. After he was given this permission, the accused returned to berth no.9 along with the members of the trap party. PW2 has deposed that as the accused was lifting the briefcase, he removed ₹100/- out of the bribe money which he had accepted from his left side coat pocket and threw it on berth no.9. PW2 then deposed that this was immediately brought to the notice of PI Rishi and the note was taken in custody by the Pancha Pradeep Nair.

27. PW2 then deposed that the digital voice recorder was handed over by him to the team members. PSI Sunil Nair was asked to

prepare a fresh solution of sodium carbonate in a clean glass beaker. All the team members except Pradeep Nair, one of the Pancha witnesses and PW2 were asked to dip their fingers one by one in the solution. The colour of the solution did not change and therefore said the solution was thrown away. PW2 then deposed that another fresh solution of sodium carbonate was prepared in a fresh clean beaker. The accused was then asked to dip his right-hand fingers in the said solution. The colour of the solution turned pink. The said pink solution was transferred to a clean glass bottle. The Pancha witnesses and PI Rishi signed on the said bottle and it was packed, sealed, and marked as Exhibit 'B'. PW2 then deposed that another fresh solution of sodium carbonate in a fresh clean beaker was prepared. The accused was then asked to dip his left-hand fingers in the said solution. The colour of the solution turned pink. The said pink solution was transferred to a clean glass bottle and again, the Pancha witnesses and PI Rishi signed on the said bottle and after it was packed and sealed, marked as Exhibit 'C'.

28. PW2 then deposed that another fresh solution of sodium carbonate in a fresh clean beaker was prepared and PW2 was then asked to dip his right-hand fingers in the said solution. Once again the colour of the solution turned pink. The said pink solution was transferred to a clean glass bottle. Both the Pancha witnesses and PI Rishi signed on the said bottle and it was packed, sealed, and marked as Exhibit 'D'.

29. PW2 then deposed that Pradeep Nair was asked to remove the note of ₹50/- from the left side coat pocket of the accused. The said

note and other note of ₹100/- were compared with the details of the currency notes noted in the pre-trap panchanama. Their descriptions matched. The recovery memo was prepared and PW2 identified this recovery memo.

30. PW2 deposed that once again fresh solution of sodium carbonate was prepared in a clean beaker. The portion of the coat of the accused in which he had kept the said notes was dipped in the said solution. The colour turned pink. The said solution was transferred to a clean glass bottle which was packed and sealed and signatures of the Pancha witnesses and PI Rishi were affixed on it and the same was marked as Exhibit 'F'. The coat was also attached and marked as Exhibit 'G'.

31. PW2 has deposed about digital recording and stated that the demand made by the accused as well as the acceptance was clear from the conversation. The memory card was removed from the digital recorder, it was wrapped in white paper and inserted in an envelope, and marked as Exhibit 'H'. PI Rishi and two Pancha witnesses signed the said envelope.

32. Now the detailed cross-examination of PW2 has not made any serious dent to the otherwise cogent and clear testimony on the aspect of demand made in the train at around 10.00 p.m., and the acceptance of ₹150/- in pursuance of such demand. The other issue raised by Mr. Desai was that PW2 in the course of his cross-

examination stated that the conversation between him and the accused was in Konkani. PW1, Pancha witness as well as the transcription of the recording indicate that the conversation was in Hindi and not Konkani. Based upon this, Mr. Desai contends that the testimony of PW2 deserves no credence and should be rejected outright.

33. PW1 has indeed deposed that the conversation which took place between the accused and PW2 in his presence was in Hindi. The transcript of the recording also establishes that this conversation was mainly in Hindi. However, based on this solitary statement in the course of the cross-examination of PW2, it is not possible to either hold that PW2 was an unreliable witness or that the testimony of PW2 should be discarded in its entirety. There is overwhelming evidence, in the form of testimony of PW1 and other members of the team regarding the incident which took place on board at around 10.00 p.m., on 29th December 2009. All such evidence establishes not only the demand for the bribe but also its acceptance by the accused. All this evidence, cannot be simply brushed aside because PW2 in the course of his cross-examination stated that this conversation with the accused was in Konkani when in fact the evidence, reveals that the same was in Hindi. According to me, this is not how the evidence in such matters is required to be evaluated. The chaff has to be separated from the grain and as long as there is consistency in the grain, the testimony cannot be rejected on the ground of some minor discrepancies which relate to the chaff.

34. The testimony of PW1- Shekhar Pillai the independent Pancha witness substantially corroborates the testimony of PW2. PW1 as noted earlier was an officer of the SBI and not some stock Pancha. PW1 has deposed in substantial details about what transpired in the train. PW1 has deposed that when the train started from Vaibhavadi Railway Station they saw the accused coming from Coach S-6 to S-5. The accused approached P. G. Naik (PW2) and told PW2 that the difference between the current tickets fare and the sleeper class reservation fare for three passengers was ₹264/- and demanded the bribe of ₹150/- from all three passengers to take them from Margao to Ratnagiri against current tickets without paying the differential amount. This deposition of PW1 is entirely consistent with the deposition of PW2 about the demand of illegal gratification onboard the train. No dent whatsoever has been made to this deposition in the course of lengthy cross-examination.

35. PW1 then deposed that P. G. Naik (PW2) took out tainted bribe amount of ₹150/- from his left side upper chest pocket of the shirt with his right hand and extended the same towards the accused who accepted the same with his right hand, counted the same with both his hands and kept the same in his left side lower front pocket of his wearing coat. PW1 has deposed that upon receipt of this amount, the accused did not even check the current tickets available with P. G. Naik. Again, this entirely corroborates the deposition of PW2 on the aspect of giving and acceptance of illegal gratification amount of ₹150/-. Again, no dent has been made to this testimony in the course of lengthy cross-

examination.

36. PW1 then deposed that P. G. Naik (PW2) gave a predetermined signal by wiping his face with both his hands and immediately after receipt of this signal, Inspector Rishi along with other team members rushed towards PW2 and made inquiries as to who had demanded and accepted the bribe amount of ₹150/- from him. PW1 then pointed a finger towards the accused and stated that it was the accused who had demanded the bribe amount and further the accused had accepted the bribe amount as well. This witness has also deposed to accused dropping one note of ₹100/- while collecting his briefcase from berth no.9. In respect of the material aspects, there is no variance between the testimony of PW1 and PW2.

37. According to me, based upon the testimony of PW1 and PW2, it is clear that the prosecution, in this case, has established beyond a reasonable doubt the case against the accused. The evidence of other witnesses also corroborates the testimony of these two witnesses though in the context of the specific role played by each of these witnesses in the entire trap operation. The circumstance that the tickets purchased by the five members of the trap party other than PW2 and two panchas were not attached hardly casts any doubt on the prosecution version. The I.O. (PW7) has deposed that he forgot to attach the said tickets and he only attached the relevant tickets i.e. tickets on which PW1, PW2, and other independent panchas traveled on the train.

38. The transcript of the conversation between PW2 and the accused has also been proved by the prosecution. The circumstance that no voice sample of PW2 may have been sent to the expert is by no means fatal. PW2 has deposed to the conversation which he had with the accused on board the train. The details of this conversation find corroboration in the testimony of PW1, the independent Pancha. The expert has deposed that the voice heard in the digital recording is the voice of the accused based on admitted voice samples of the accused. Therefore, there is no case made out to reject the evidence in the form of digital recording which has been duly proved by the prosecution.

39. Now the transcript of the recording does suggest that at least on three occasions the accused informed PW1, PW2, and other independent witnesses that the legitimate fare for them to travel in Sleeper Class would come to ₹264/-. The accused can also be said to have stated to them that he would issue a receipt if they wish to claim this amount from their employer. However, the transcript also establishes that the accused was most comfortable with not issuing any receipt and allowing them to travel from Margao to Ratnagiri in a Sleeper Coach on paying illegal gratification of ₹150/-. This, when considered along with proof of finding the tainted amount of ₹150/- in the coat pocket of the accused, establishes the prosecution case against the accused beyond a reasonable doubt. There is no merit in the contention that in this case the trap party lured or tempted the accused to accept the illegal gratification. Neither does the testimony of PW1 and PW2 nor the reading of the transcript suggest that this was a case

where the accused was coaxed or unduly egged on to accept the illegal gratification. This is a case where the demand and acceptance of illegal gratification have been proved beyond a reasonable doubt by the prosecution.

40. In *Ramjanam Singh Vs State of Bihar*⁸, the accused was a PSI who was accused of having accepted a bribe of ₹100/- for himself and ₹25/- for Assistant Sub Inspector (ASI) for dropping the proceedings against the complainant. The prosecution had alleged that on 17.10.1951, the accused accepted the bribe of ₹100/-. The trial court had acquitted the accused. However, the acquittal was reversed by the High Court, and the issue before the Hon'ble Supreme Court was whether any case had been made out before the High Court to warrant interference with the acquittal recorded by the trial Court.

41. Now the principles for interference with the acquittal are quite clear. There is a presumption of innocence which is further strengthened by the acquittal recorded by the trial Court. Therefore, unless a case of clear perversity is demonstrated or normally there is no question of interference with an order of acquittal. Even if the plausible view has been taken by the trial Court, the High Court is not supposed to interfere with an acquittal, merely because it has a different view on the matter. Ultimately, the Hon'ble Apex Court held that the reasons given by the High Court were not enough to justify the setting aside of the acquittal. The Hon'ble Apex Court observed that strong presumption of innocence and the doubts which the numerous

⁸ AIR 1956 SC 643

circumstances to which they had adverted and which were given in greater detail in the order of the learned trial Court had not been displaced. This is the first reason to distinguish *Ramjanam Singh* (supra).

42. Secondly the Hon'ble Apex Court after evaluating the testimony on record also concluded that the entire prosecution version was itself not believable and suffered from inherent improbability. This is the second reason to distinguish *Ramjanam Singh* (supra).

43. No doubt, in paragraph 49 of *Ramjanam Singh* (supra) the Hon'ble Apex Court after observing that this was not a case of laying a trap, in the usual way, for a man who was demanding a bribe but this was an accused deliberately tempting a man to his own undoing after his suggestion about breaking the law had been finally and conclusively rejected with considerable emphasis and decision. After recording this factual finding, the Hon'ble Apex Court proceeded to state that whatever the criminal tendencies of a man may be, he has a right to expect that he will not be deliberately tempted beyond the powers of his frail endurance and provoked into breaking the law; and more particularly by those who are the guardians and keepers of the law. However regrettable the necessity of employing agents provocateurs may be, it is one thing to tempt a suspected offender to overt action when he is doing all he can to commit a crime and has every intention of carrying through his nefarious purpose from start to finish, and quite another to egg him on to do that which it has been finally and firmly

decided shall not be done.

44. The Hon'ble Apex Court also noted that lying of trap is unfortunately often inevitable if corruption is to be detected and bribery stamped out. The Apex Court proceeded to hold that the very best of men have moments of weakness and temptation, and even the worst, times when they repent of an evil thought and are given an inner strength to set Satan behind them; and if they do, whether it is because of caution, or because of their better instincts, or because some other has shown them either the futility or the wickedness of wrongdoing, it behooves society and the State to protect them and help them in their good resolve: not to place further temptation in their way and start afresh a train of criminal thought which had been finally set aside.

45. Now, in the present case, there is no evidence to suggest that the accused was not at all interested in accepting any bribe for allowing the decoy and the independent panchas to travel from Margao to Ratnagiri in Sleeper class. This is not at all the case where the accused had rejected any bribe which may have been offered to him. Rather, this is a case where the evidence establishes that the accused demanded and accepted a bribe by abusing his official position. The contention that the accused may not have been averse to charging ₹264/- and issuing a receipt is really neither made out nor can it be said that this was sufficient to attract the ruling in *Ramjanam Singh* (supra). This is rather a case where the accused was quite keen on accepting illegal gratification and trap, only establishes this aspect of demand and acceptance of illegal

gratification beyond a reasonable doubt.

46. In *Som Prakash Vs State of Delhi*⁹, the Hon'ble Supreme Court on the aspect of setting up of trap in such cases made the following observations in paragraph 6:-

"6. Yet, the contentions have been ingeniously and hopefully presented. The basic attack has been on the morally murky mechanism of criminal trap. Who has not-our legends say, even rishis have - succumbed to attractive temptation in loneliness laid ? And courts have frowned upon evidence procured by such experiments since the participants are prone to be over-anxious and under-scrupulous and the victims are caught morally unawares. Even so, there are traps and traps. Where you intercept the natural course of the corrupt stream by setting an invisible contraption its ethics above board. On the contrary, to test the moral fibre of an officer whose reputation is suspect, if you lay a crime 'mine' which explodes when he, in a weak moment, walks on it the whole scheme is tainted. Of course, our social milieu is so vitiated by a superstitious belief that any official can be activated by illegal gratification, so confidential is the technique of give and take in which the white collar offender is adept and so tough is the forensic problem of proof beyond reasonable doubt by good testimony in this area, that the only hope of tracking down the tricky officers is by laying traps and creating statutory presumptions. Even Kautilya has stated that "just as fish moving under water cannot possibly be found out either as drinking or not drinking water so government servants cannot be found out while taking money." Ex cathedra condemnation of all traps and associate witnesses is neither pragmatic nor just, nor is it fair to denounce all public servants indiscriminately. Judicial attitudes have to be discriminating, as has happened in this case. The High Court has, after careful study, chosen to accept the bona fides of the trap and its

⁹ 1974(4) SCC 84

author Bishnoi, a senior police official of the S.P.E (P. W. 27). We cannot accede to the theory that the trapping of corrupt officials, in the usual course, is a polluted procedure.”

47. In *Som Prakash* (supra) the Hon'ble Supreme Court emphatically ruled that the evidence of the witnesses involved in the trap cannot be regarded as tainted evidence nor can such witnesses be styled as unworthy. The Court held that the rulings merely indicate the need for caution and corroboration depending on the circumstances of each case. An awakened judicial conscience and an alert critical appraisal are the best tools in this process.

48. In *Som Prakash* (supra) the Hon'ble Supreme Court also did not accept the general denunciation of investigating officers as a suspect species. Therefore, though the evidence of trap witnesses must not be slowed without scrutiny, at the same time, such evidence must not be rejected as being tainted or otherwise sourced from unworthy witnesses. Finally, the Hon'ble Apex Court to sum up see no good ground to overturn the factual findings recorded by the trial judge and affirmed on appeal. The conviction was therefore maintained.

49. The circumstances in *Shridhar Chavan* (supra) offer no parallel whatsoever with the circumstances in the present case. In *Shridhar Chavan* (supra), this Court found fault with the complainant Advocate who knew that the matter did not pertain to the assignment of the Hon'ble Judge presiding over the room No.27 and despite the same this Advocate attempted to obtain circulation of the matter before

that Court. This Court concluded that the Advocate was, so to say on fishing expeditions to discover the illegalities in the working of this Court. This Court also noted that no permission for laying a trap in the premises of this Court was obtained from the Hon'ble The Chief Justice despite the Manual of instructions issued by the Maharashtra State not contemplating laying of such traps in the Court premises. This Court found that the norms of propriety were not followed by the Investigating Agency and it is based on all these grounds the conviction was set aside.

50. Similarly, the facts in *Dinkar Deokar* (supra) are also in no manner comparable to the facts of the present case. This decision proceeds on the basis that an officer who has recorded the FIR himself may not be competent to investigate the matter. This is not the legally correct position in law. Besides, this was a case where the independent Pancha in whose presence the bribe was supposed to have been given was not even examined by the prosecution.

51. *C. M. Girish Babu* (supra) was relied on by Mr. Desai to submit that the presumption under Section 20 of the said Act arises only after the prosecution has succeeded in proving that there was a demand for illegal gratification. This decision also holds that the burden of proof placed upon the accused is not akin to that of the burden placed on the prosecution to prove the case beyond a reasonable doubt. The onus of proof that lies upon the accused is to prove his case by a preponderance of probability only.

52. In this case, the prosecution has proved beyond reasonable doubt the factum of demand and acceptance of illegal gratification. Therefore, the presumption under Section 20 of the said Act was quite correctly raised by the learned Special Judge in this matter. The accused has not discharged the onus even applying the test of preponderance of probabilities. Both in the cross-examination as well as in the statement under Section 313 of Cr.P.C., the accused denied the entire prosecution version. There was no explanation offered to the incriminating evidence on record which was put to the accused. In such a situation, it can hardly be said that the accused rebutted the presumption under Section 20 of the said Act.

53. *A. Subair* (supra) the Hon'ble Apex Court has held that where the complainant was not examined and there was no substance to prove the factum of demand, the accused was entitled to be acquitted. This is certainly not the position in the present case where the prosecution has proved beyond reasonable doubt the factum of demand of illegal gratification as well as acceptance of illegal gratification.

54. Mr. Desai's contention about the absence of any evidence that the trap party members carrying a printer onboard is hardly sufficient to ignore the clear and cogent evidence on the record as to the main ingredients of the offence under Sections 7 and 13 of the said Act. The witnesses have explained and one of the panchas (PW1) has deposed to the contents of the panchanamas. The ocular evidence in this matter is quite clear. This is corroborated by the evidence in the

form of digital recording. The panchanamas substantially reflect what is deposed to by the several witnesses in this matter. Therefore, merely because the witnesses may not have deposed to carrying a printer along with them cannot be a good ground to interfere with the conviction recorded by the learned Special Court in this matter. Based upon this circumstance, there is no case made out to interfere with the conviction recorded in the impugned judgment and order.

55. The non-examination of the second Pancha makes no dent to the prosecution version. One of the panchas (PW1) has been examined. So also, the non-examination of Sunil Nair, Ramesh Kumar, and Anand Kolamkar, the members of the trap party makes no dent to the prosecution version. Other members of the trap party have been examined. The I.O. who was part of the trap party has also deposed in this matter. PW1 and PW2 have also deposed in great detail to the trap as it was laid and as it unfolded. The prosecution is not required to examine all the members of the trap party. There is ample evidence on record about the trap. The accused has not demonstrated any prejudice whatsoever on account of the non-examination of these witnesses.

56. Even if it is held that there is no clear evidence about the demand for illegal gratification on the platform of the Margao Railway Station between 17.40 to 17.50 hours, the same, makes no dent to the prosecution version about specific charge framed against the accused. The charge does not refer to the demand on the platform between 17.40 to 17.50 hours. The charge concerns the demand made by the

accused on board the train at about 22.05 hours and acceptance of such gratification by the accused at or around the same time. The charge has been proved by the prosecution beyond a reasonable doubt.

57. Mr. Desai's contention that some benefit of the doubt is required to be extended to the accused in the present matter, also cannot be accepted based upon evidence on record in this matter. At least evidence on record, give rise no doubt about the prosecution version. Merely because some doubts are raised in the course of the arguments, it is not possible to extend the benefit of such doubts to the accused person. Only such doubts which reasonably arise from the evidence on record can be taken into account and not any and every doubt whether the same relates to any important aspect of the matter or not. The Court is required to separate the chaff from the grain and where the prosecution evidence is undented in so far as the grain of the matter is concerned, there is no question of unduly extending the benefit of reasonable doubt to the accused person.

58. In *HP Administration vs. Om Prakash*¹⁰, the Hon'ble Apex Court, has explained the concept of proof beyond reasonable doubt and the circumstances in which a benefit of the doubt can be extended to the accused persons. The Hon'ble Apex Court has held that it is not beyond the ken of experienced, able, and astute lawyers to raise doubts and uncertainties in respect of the prosecution evidence either during the trial by cross-examination or by the marshaling of that evidence in the manner in which the emphasis is placed thereon. But

¹⁰ (1972) 1 SCC 249

what has to be borne in mind is that the penumbra of uncertainty in the evidence before a court is generally due to the nature and quality of that evidence. It may be the witnesses are lying or where they are honest and truthful; they are not certain. It is, therefore, difficult to expect a scientific or mathematical exactitude while dealing with such evidence or arriving at a true conclusion. Because of these difficulties corroboration is sought wherever possible, and the maxim that the accused should be given the benefit of doubt becomes pivotal in the Prosecution of offenders which in other words means that the Prosecution must prove its case against an accused beyond a reasonable doubt by a sufficiency of credible evidence. The benefit of the doubt to which the accused is entitled is reasonable doubt — the doubt which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy — though unwittingly it may be — or is afraid of the logical consequences if that benefit was not given. Or as one great Judge said it is “*not the doubt of a vacillating mind that has no moral courage to decide but shelters itself in a vain and idle scepticism*”. It does not mean that the evidence must be so strong as to exclude even a remote possibility that the accused could not have committed the offence. If that were so the law would fail to protect society as in no case can such a possibility be excluded. It will give room for fanciful conjectures or untenable doubts and will result in deflecting the course of justice if not thwart it altogether. It is for this reason the phrase has been criticized. Lord Goddard, C.J., in *Rox v. Kritz* —[1950] 1 KB 82 said that when in explaining to the juries what the Prosecution has to establish a Judge begins to use the words

“*reasonable doubt*” and try to explain what is reasonable doubt and what is not, he is much more likely to confuse the jury than if he tells them in plain language. ‘*It is the duty of the prosecution to satisfy you of the prisoner’s guilt*’. What in effect this approach amounts to is that the greatest possible care should be taken by the Court in convicting an accused who is presumed to be innocent till the contrary is clearly established which burden is always in the accusatory system, on the Prosecution. The mere fact that there is only a remote possibility in favour of the accused is itself sufficient to establish the case beyond reasonable doubt. This then is the approach.

59. Similarly, in *Shivaji Sahabrao Bobade v. State of Maharashtra*¹¹, the Hon’ble Supreme Court has cautioned against the dangers of exaggerated devotion to the rule of benefit of the doubt at the expense of social defence and to the soothing sentiment that all acquittal is always good regardless of justice to the victim and the community. The Apex Court has held that the judicial instrument has public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy, and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go, but one innocent martyr shall not suffer a false dilemma. Only reasonable doubts belong to the accused. Otherwise, any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person lightheartedly goes much beyond the simple fact that just one guilty

¹¹ (1973) 2 SCC 793

person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this, in turn, leads to public demand for harsher legal presumptions against indicted ‘persons’ and more severe punishment to those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that “*a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent...*” In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents.

60. In *Harijana Thirupala v. Public Prosecutor*¹² the Hon’ble Apex Court has held that in our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the Prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further, if two views are possible on the evidence produced in the case, one indicating the guilt of the accused and the other to his innocence, the view favorable to the accused is to be accepted. In cases where the Court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the Court must not reject the evidence of the Prosecution taking it as false,

¹²(2002) 6 SCC 470

untrustworthy, or unreliable on fanciful grounds or based on conjectures and surmises. The case of the Prosecution must be judged as a whole, having regard to the totality of the evidence. In appreciating the evidence, the approach of the Court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in concluding as to the guilt or otherwise of the accused. In concluding the guilt of the accused, the Court has to appreciate, analyze, and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value, and the animus of witnesses. It must be added that ultimately and finally, the decision in every case depends upon the facts of each case.

61. Applying the aforesaid principles to the facts on record, it is not possible to extend any benefit of the doubt to the accused in the present matter. This is a matter where the prosecution has succeeded in proving the charges against the accused beyond a reasonable doubt.

62. In so far as the sentence is concerned, the learned Special Judge has imposed a minimum sentence for the offence under Section 13(1)(d)(ii) of the said Act, which is one-year imprisonment. For the offence under Section 7 of the said Act, however, the learned Special Judge has imposed a sentence of one year even though the minimum sentence prescribed at the relevant time was six months. The learned Special Judge has however ordered the substantive sentences to run concurrently. In effect, therefore, the accused has been sentenced to

undergo simple imprisonment for one year and to pay a fine of ₹1000/- for each of the offences. Such sentences also warrant no interference in the facts of the present case.

63. As a result, this appeal fails and is hereby dismissed. There shall be no order as to costs.

64. The Appellant —Accused is however granted six weeks' time to surrender before the learned Special Court to serve the remainder of the sentence.

M. S. Sonak, J

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