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

CRL. A. 106/2013

Reserved on :   02.03.2020

Date of Decision : 04.05.2020

IN THE MATTER OF:

JAHAN SINGH ..... Appellant

Through: Ms. Purnima Maheshwari and Mr. Nipum Sharma, Advocates.

Versus

CBI-THE STATE ..... Respondent

Through: Mr. Rajesh Kumar, SPP for CBI with Ms. Saumya Johari and Ms. Santwana, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J.

1. The present appeal has assailed the judgment of conviction dated 22.11.2012 and order on sentence dated 03.12.2012 passed by Special Judge, CBI whereby the appellant was convicted for the offence punishable under Sections 7 & 15 of the Prevention of Corruption Act. He was sentenced to undergo RI for one year under Section 7 of P.C. Act along with fine of Rs.5,000/- in default whereof to undergo SI for one month. The appellant was also sentenced to undergo RI for one year under Section 15 of P.C. Act along with fine of Rs.5,000/- in default whereof to undergo SI for one month.

2. For the sake of felicity, the facts of the case as noted by the trial court are reproduced below:-

"2. The law was set in motion after Dr. Salim Basha Managing Partner of South Indian Shipping & Export Co. (SISECO) made a complaint to CBI. The complainant was to the effect that SISECO was dealing with clearing and forwarding work and had contract with M/s Tribal Co-Operative Marketing Federation of India (TRIFED). SISECO got custom clearance for TRIFED and raised bills from time to time and also received payment in installments. For custom clearances Rs.46 Lacs were payable by TRIFED to SISECO. Rs. 15 Lacs had been received about three years before making the complaint leaving balance amount of Rs.31 lacs. Managing Director of the TRIFED had informed that payment would be made only after receipt of sanction order from Ministry of Social Justice & Empowerment, Shastri Bhawan, New Delhi. Sanction order was issued by the Ministry of Social Justice to TRIFED. Accused Jahan Singh wanted bribe of Rs.4,35,000/- for early processing of the file. He (Complainant Dr. Salim Basha) recorded the conversation. Accused then agreed to accept Rs. 2 Lacs in advance for processing the file and Rs. 2 Lacs after final approval from the M.D.

3. RC 55(A)/03 was registered. Trap team was constituted. Complainant produced micro cassette containing conversation between him and the accused. Accused had informed the complainant that he would be coming to his hotel room on 17.10.03 at 4 p.m. In room No. 309, South Indian Hotel, Karol Bagh, a video camera was installed and audio recording instrument was provided to the complainant for recording the entire act of demand of bribe. CBI officials were positioned inside the bathroom of the hotel room of the complainant and some officers took position outside. At about 3.40 p.m., accused came to the hotel room and had detailed discussion with complainant in presence of Dr. Shaukatullah Executive Director of SISECO. He agreed to accept Rs.2 Lacs in advance and Rs. 2 Lacs at the time of *handing over of draft/cheque of the outstanding amount. The conversation was recorded and heard by independent witness with help of earphones The video cassette was also played which confirmed the demand of bribe. Investigation indicated that accused had also visited Ministry of Social Justice & Empowerment without being authorized to visit and collected copy of sanction letter for release of payment to SISECO. Accused had also made a false entry in the register maintained by TRIFED at S.No. 80 dt. 17.10.03 wherein he had shown the official purpose as visit to LIC Office whereas at 3.40 p.m. he was at South Indian Hotel, Karol Bagh with the complainant. It was prayed that he be summoned and tried for the offences."*

3. After completion of investigation, a charge sheet was filed against the appellant. On 15.07.2005, the trial court framed the following charge against him:

> *"That you while being employed as Accountant in Tribal Co-Operative Marketing Development Federation of India Ltd. on 16.10.03 at South Indian Hotel, Karol Bagh, New Delhi demanded illegal gratification of Rs. 4 Lacs from the complainant Dr. T. Salim Basha for processing his company's i.e. SISECO file for realization of payment of Rs.31 Lacs and again on 17.10.03 in room No. 309 of the above said hotel you again demanded Rs. 4 Lacs from the above named complainant for the above said purpose, and thereby you committed an offence punishable under Section 7 of Prevention of Corruption Act, 1988 and within my cognizance.*
>
> *Secondly, that on the aforesaid dates, time and place you made an attempt to obtain illegal gratification from the above named complainant and thereby you also committed an offence punishable under section 15 of Prevention of Corruption Act, 1988 and within my cognizance."*

4. The appellant pleaded not guilty and claimed trial. The prosecution in support of its case examined a total of 13 witnesses. The appellant denied the prosecution case.

5. I have heard Ms. Purnima Maheshwari, learned counsel for the appellant and Mr. Rajesh Kumar, SPP for CBI and have also gone through the case records.

6. Learned counsel for the appellant contended that the appellant never visited the complainant's hotel room on 16.10.03; that the appellant went to LIC office in Khan Market and thereafter visited the complainant's hotel on 17.10.2003 at the asking of a senior officer to handover one sealed file which was deliberately not recovered; that he never made any demand and even otherwise on the point of demand there are material contradictions in the statement of prosecution witnesses namely, the complainant, Dr. Shaukatullah and Satbir Singh who was the independent witness; that the audio cassettes produced on record by the prosecution were tampered; that the appellant was not in any position to favor the complainant's company. While referring to the site plan and video recording, it was contended that there is no alleged bathroom/washroom in the hotel and as such testimony of witnesses that they overheard the conversation is immaterial. Lastly, it was submitted that the sanction order is silent about the audio recording and that presumption u/s 20 of the PC Act cannot be drawn without laying any foundation for it.

7. Learned SPP for the CBI, on the other hand, has supported the impugned judgment. It was submitted that the prosecution case was duly

proved by the complainant and Dr. Shaukatullah and the demand made by the appellant was corroborated by the electronic evidence on record.

MATERIAL WITNESSES

8. The appellant was working as an Accountant in M/s Tribal Cooperative Marketing Federation of India (hereinafter referred as TRIFED), the clearing and forwarding agent for Ministry of Social Justice and Empowerment.

The Sanction Order (Ex.PW-4/A) for prosecution of the appellant was proved by Mr. Kush Verma (PW-4), who at the relevant time was the Executive Director, TRIFED.

9. Salim Basha, the complainant was examined as PW-13. He deposed that his company i.e., 'South Indian Shipping and Export Company' (hereinafter referred as SISECO) was acting as a clearing and forwarding agent for TRIFED. His company raised bills for an amount of Rs.46,45,000/-, out of which Rs.15 lacs were received and balance of Rs.31,45,000/- remained to be paid. After reconciliation, an amount of Rs.28,77,299/- was found to be payable to his company. Although, a sanction order for release of the aforesaid amount was issued by the Ministry of Social Justice and Empowerment but the appellant demanded Rs.5 lacs to release the amount. He met the Managing Director of TRIFED and made an oral complaint. He made a complaint to the CBI and proved it as Ex.PW13/A.

10. He deposed that on 16.10.2003, he went to the CBI Office and at their asking called the appellant to his hotel room. Dr. Shaukatullah, the

Executive Director of SISECO, was also present in the room. The appellant came and made a demand of Rs.4,35,000/-. The conversation was recorded on a micro cassette. On next day, he handed over the said micro cassette along with a written complaint in the office of CBI.

11. He further deposed that on 17.10.2003, as per the trap planned, he again called the appellant to his hotel room. The hotel room was wired with a micro tape recorder and video camera. While he & Dr. Shaukatullah remained in the room, a CBI officer and the independent witness hid in the attached bathroom. The other members of the raiding team were stationed outside the hotel room. At about 6.30/7p.m., the appellant came and made a demand of Rs.4 lacs. The appellant asked for Rs.2 lacs to be paid before the release of payment and Rs.2 lacs after the release. The appellant was apprehended at the spot. The complainant proved the pre-trap and the post trap proceedings.

12. He also proved the audio cassettes marked Q1, Q2 and Q3 which were also played in the Court. The cassette marked Q1 & Q2 contained conversations dated 16.10.03 & 17.10.03 which took place between the complainant and the appellant in the hotel room. The cassette marked Q3 was a simultaneous recording of the conversation by the CBI officer through a microphone while hiding in the bathroom. The complainant identified his own voice as well as that of the appellant in the cassettes. The trial court observed that the cassette contained conversation where talks of Rs. 4 lacs were made by a person. The complainant also proved a video cassette (Ex. P-1) containing footage of the hotel room recorded on 17.10.2003. It was played in the Court and the trial court observed that it showed the appellant entering the room 'with a file' and conversing with

the complainant. It also showed presence of one more person, who was identified by the complainant as Dr. Shaukatullah. The trial court further observed that the recording also showed some persons emerging from a door which was inside the room itself. The witness identified the said persons as CBI officers. The trial court also observed that the room from where CBI officers emerged did not carry any name plate with bathroom written nor any bathroom fittings were visible.

13. During cross-examination, the complainant admitted that he had met Mr. Meena, the Executive Director (Finance) of TRIFED on a number of occasions with respect to his business. He stated that the appellant had come to his hotel room on three occasions. He stated that initially, the appellant reduced the demand by Rs.15,000/- and later by another Rs.20,000/-. He admitted that though he met Mr. Meena, but he did not make any complaint to him. He denied the suggestion that he was unhappy with Mr. Meena and the Managing Director and for that reason the appellant was made a scapegoat. He also admitted that TRIFED had no authority to pass the bill or make the payment and the same were to be passed by the Ministry of Social Justice and Empowerment. He also admitted that he did not witness the first demand made by the appellant as the same was made to Dr. Shaukatullah. He also stated that the disputes with respect to payment were later referred to arbitrator and his payment was stopped by the TRIFED after arrest of the appellant.

14. Dr. Shaukatullah, the Executive Director of SISECO, was examined as PW14. He deposed that on 30.09.2003, the Ministry passed the sanction order for release of payment of Rs.31 lacs after which, on 16.10.2003, he went to the Office of TRIEFD where he met the appellant

who demanded Rs.5 lacs for releasing the payment. The witness informed the complainant who then came to Delhi and they both met the Managing Director of TRIEFD and informed him about the demand made by the appellant. The witness supported the testimony of the complainant on the events that took place on 16.10.2003 and 17.10.2003. During cross-examination, he admitted that TRIFED had no authority to clear the bill as the same was to be sanctioned by the Ministry. He also admitted that appellant had no authority to sanction though it was his duty to put the file before the senior officers. He denied the suggestion that the appellant had not demanded any bribe and was falsely implicated.

15. The prosecution also examined two independent witnesses namely, Kalyan Singh Rawat and Satbir Singh, both from MCD, as PW2 and PW3 respectively. They were associated with the trap proceedings conducted on 17.10.2003.

16. Kalyan Singh Rawat deposed that he was present outside the hotel room and deposed that he did not witness any demand made by the appellant.

17. Satbir Singh deposed that he was present in the bathroom along with one CBI Inspector Prem. He heard the conversations through an ear phone. He heard the appellant demanding Rs.4 lacs for release of payment to the complainant. The appellant stated that Rs.2 lacs be paid before the release of payment and Rs.2 lacs thereafter. He also identified the audio and video cassettes that were seized at the spot. During cross examination, he stated that he did not remember the exact sentences of

the conversation that he heard through the earphone but they were regarding release of payment and demand of Rs.4 lacs. The other person had answered that he could pay Rs.2 lacs. The witness deposed that he did not hear any other conversation.

18. Mr. N. Satya Narayan, DGM Finance, TRIFED was examined as PW10. He deposed that on 15.10.2003, Dr. Shaukatullah met him and complained about the pending bills which were not cleared by the appellant. He stated that he told Dr. Shaukatullah that appellant was only an Accountant and had nothing to do with clearing the dues which authority was with the Managing Director. He further deposed that on the same day, a meeting was held with the Managing Director where Mr. Meena, the Executive Director was also present. In the meeting, Mr. Meena confirmed that the sanction order regarding release of payment to the complainant's company was issued by the Ministry. On request of Mr. Meena, a committee was formed to examine the pending bills of SISECO. The committee was given 3 days' time to examine and report. He deposed that he had not seen the sanction order till that time. He also deposed about the process of forwarding of the sanction order from the Ministry and its receipt in TRIFED. It was stated that when an order is received by the Managing Director, it is marked to the Executive Director who then forwards it to the Deputy General Manager and lastly it reaches the Accountant. Thereafter, the Accountant puts the file before the Assistant Manager and thereafter it is marked to Deputy General Manager who then examines & clears the file for payment. If the matter is complex, then the same is put before a committee. He deposed that in the present case, the sanction order (Ex.PW6/A) had come to him from

the Executive Director and the same was marked to the appellant. The appellant followed the normal procedure by putting the file before the Executive Director.

19. During cross-examination, he admitted that there was some dispute between SISECO and TRIEFD on the amount of payment which was later referred to an arbitrator. He admitted that TRIFED had taken a stand that they had already made overpayments to SISECO and nothing more was payable. He admitted that the appellant was deputed to go to the Ministry and collect the sanction. He also admitted that Mr. Meena was In-charge of Finance and was dealing with the complainant's matter. He also admitted that the appellant was not in a position to give favor to SISECO.

20. Mr. D. K. Bhai, Under Secretary, Ministry of Social Justice and Environment was examined as PW-6. He proved the sanction order dated 30.09.2003 with regard to reimbursement of handling charges of Rs.28,71,299/- to TRIEFD as Ex.PW6/A. He also deposed that after 7-8 days of release of the aforesaid sanction order, the appellant had visited the Ministry and told the witness of non-receipt of the order, whereof a copy was provided to the appellant by hand. To the similar extent is the testimony of Anthony Xavier (PW-8).

21. R.S. Meena, the Executive Director, TRIFED was examined as PW-7. He deposed that the sanction order was given to him by the appellant on 15.10.2003. He then marked it to the Managing Director on the same day. He denied the suggestion that the appellant brought the order from the Ministry on his directions.

22. The prosecution also examined Shiv Pal (PW-1) in reference to the telephone call received in the office of TRIFED on 17.10.2003 for the appellant. The witness admitted that he did ask for the identity of the caller. The trial court did not place any reliance on his deposition as neither the identity of the caller nor its purpose was stated.

23. Insp. Amit Vikram Bhardwaj, the Investigating Officer, was examined as PW-15. He deposed about the trap proceedings. He proved the seizure of audio & video cassettes from the spot and their recovery memo. He proved the hotel entry register with respect to complainant's booking. He also seized the attendance register, despatch register, section diary, peon book etc. He stated that for taking the voice specimen sample, the appellant was given an extract from the questioned recordings. The text was prepared by SI Sandipni Garg, a CBI officer who also prepared the transcription of recording. He proved the transcription as Ex PW15/E. He identified the handwriting of SI Sandipini Garg on the same. He stated that the search of the appellant's office was carried out by a different CBI team.

24. The prosecution did not examine any CBI officer other than the I.O. Amit Vikram Bhardwaj. To prove the search of appellant's office, the prosecution examined Dr. N. Hangloo, Senior Assistant (Vigilance), TRIEFD as PW-9. He proved the office search-cum-seizure memo dated 17.10.2003. The sanction order and copy of a note sheet regarding pending payment of SISECO was recovered. In cross-examination, he stated that he was not aware of the contents of the documents that were recovered.

ANALYSIS & DISCUSSION

I. SANCTION

25. Learned counsel for the appellant next contended that the sanction order shows non-application of mind, as the same is silent about the receipt of the audio recordings. In this regard, the testimony of Kush Verma (PW-4) shows that sanction was granted after documents were put before him. In the cross-examination, he stated that he had gone through all the documents including video and statements of the witnesses. No question or suggestion was given to the witness that the audio cassettes were not supplied to him along with the documents.

II. AUDIO/VIDEO CASSETTES

26. Mr. D. K. Tanwar, Sr. Scientific Officer, CFSL was examined as PW5. He proved his forensic examination report as Ex.PW5/A. The report mentioned that the forwarding authority had requested for comparison of the voice of the appellant contained in the cassette marked SVR with the voice contained in the cassettes marked PTR(A), Q1(A), Q2(A) and Q3(A). He deposed that the voices marked Ex. PTR, Q1, Q2 and Q3 were the probable voice of the appellant whose specimen voice was marked Ex.SVR. During cross-examination, he denied the suggestion that it was not the appellant's voice in the conversation.

27. A perusal of the trial court record and specifically the testimony of Insp. Amit Vikram Bhardwaj would show that none of the witnesses deposed about the details of the 'seal' that was put on the audio & video cassettes. Although, the recovery memo Ex. PW2/B mentioned that after

use, the seal was handed over to the independent witness Kalyan Singh Rawat however, neither Insp. Amit Vikram Bhardwaj nor Kalyan Singh Rawat has deposed about the handing over or receiving of the seal after its use. The aforesaid aspect becomes material as the custody of the audio and video cassettes after their seizure, has remained unexplained. The testimony of the I.O. i.e., Insp. Amit Vikram Bhardwaj is completely silent as to whom the custody of the seized cassettes was given. The prosecution has neither examined the storekeeper nor placed any material on record in this regard. Moreover, although the cassettes were seized on 17.10.2003 itself however, the same were sent for forensic examination only on 15.12.2003 i.e., after a period of two months. There is not an iota of evidence as to where the case property remained from 17.10.2003 till 15.12.2003.

28. It has come in the deposition of Insp. Amit Vikram Bhardwaj that the transcription marked-X (D-14) was prepared by SI Sandipini Garg who was not examined in the trial. It was exhibited as Ex. PW-15/D. The I.O. had only identified handwriting of SI Sandipini Garg on the transcription but did not depose about the contents of the same. In such circumstances, the contents of the transcription cannot be said to be proved. It is also relevant to note that although a copy of the transcription was sent to the CFSL but no opinion was sought either on the contents of the transcription or its correctness and authenticity.

29. During trial, the appellant took the defense that after his arrest, some audio CDs were recorded in the CBI office and that the seals on the parcels were tampered with before sending the same for forensic examination. In the opinion of this court, for failure of the prosecution in

not bringing on record any evidence with respect to the custody of the audio and video cassettes from 17.10.2003 to 15.12.2003, no reliance can be placed either on the cassettes or the transcription.

III. DEMAND

30. The charge framed against the appellant was for making a demand in the hotel room on 16.10.2003 and 17.10.2003.

31. Learned counsel for the appellant has contended that the complainant and his employee, Dr. Shaukatullah were interested and biased witnesses and hence their testimonies ought not to have been relied upon by the trial court.

32. The present is not a case of payment of any bribe amount or recovery of the same from the appellant as it has come on record that the complainant was not willing to produce the bribe amount for the trap. The testimony of the three witnesses i.e., the complainant, Dr. Shaukatullah and Satbir Singh have to be carefully scrutinized in light of the given facts and to rule out false implication.

33. A perusal of the testimonies of the complainant and Dr. Shaukatullah would show that their testimony was not consistent about various aspects of the prosecution case and also on material aspects of the conversation that took place with the appellant.

34. The complainant had stated that on 15.10.2003, he went and met the Managing Director of TRIEFD to complain about the appellant. He did not state that Dr. Shaukatullah was accompanying him at that time. Dr. Shaukatullah, on the other hand, stated that subsequent to the demand

of Rs.5 lacs made by the appellant in his office, he along with the complainant met the Managing Director. The Managing Director was not cited as a witness. However, Shri N. Satya Narayan, DGM, stated that on 15.10.2003 it was only Dr. Shaukatullah who met him.

THE DEMAND MADE ON 16.10.2003 IN THE HOTEL ROOM

35. As per the prosecution case, the complainant called the appellant to his hotel room on 16.10.2003 where both complainant and Dr. Shaukatullah were present. A perusal of their deposition would show that whereas the complainant stated that the appellant demanded Rs.4,35,000/- and he made a request to the appellant to reduce the amount but Dr. Shaukatullah did not state about any specific amount. He only stated that the appellant had visited the hotel room and the discussion about the demand was recorded. The appellant has denied going to the hotel room on this day. The I.O had seized an outgoing register of TRIFED (Ex. PW15/M) but it did not show any outgoing entry of the appellant for the said date.

THE DEMAND MADE ON 17.10.2003 IN THE HOTEL ROOM

36. The complainant during his deposition gave a lengthy description of how the appellant came at about 6:30/7 p.m. and finally made a demand of Rs.4 lacs. He deposed that the initial demand was Rs.4,35,000/- which was reduced to Rs.4 lacs. He also spoke to his father and told the appellant that his father was not willing to pay Rs.4 lacs and the demand should be further reduced. A perusal of the complainant's testimony would show that in his statement recorded during examination on 23.02.2011, it was stated that it was the appellant who asked him to

pay Rs.4 lacs in two installments of Rs.2 lacs each but in his subsequent statement recorded on 01.06.2011, it was stated that it was he who proposed to pay Rs.2 lacs before the release of the payment and Rs.2 lacs thereafter. The complainant further stated that the appellant told him that Rs.30 lacs would be released. He complained to the appellant that a day earlier, the appellant had agreed to release Rs.30,73,000/-. Thereafter, the appellant had assured that he would do the needful.

37. On the other hand, a perusal of the testimony of Dr. Shaukatullah would show that though he was present along with the complainant in the hotel room during the entire period but his testimony is completely silent on the aforesaid details of the conversation. He neither stated about the complainant speaking to his father nor about the two installments. He also did not state the exact amount of demand which was Rs.4 lacs but rather stated that the amount finalized between the two was probably Rs.4.30 lacs.

38. The prosecution cited two independent witnesses in support of the trap proceedings dated 17.10.2003. It is relevant to mention that Insp Amit Vikram Bhardwaj stated that the complainant specifically told him not to station any independent witness along with him in the hotel room. The testimony of Kalyan Singh Rawat is silent on the demand as he was positioned outside the hotel room and admittedly did not hear any conversation.

39. The second independent witness, i.e., Satbir Singh was hiding in the bathroom. He apparently heard the conversation through an earphone. He deposed that a demand of Rs.4 lacs was made by the appellant for

release of payment. As complainant said he could not pay that much amount, the appellant asked the complainant to pay Rs.2 lacs at that time and remaining after release of the payment. The testimony of the independent witness has to be examined in light of the fact that he did not witness the conversation but only heard it through an earphone. It is relevant to note that Satbir Singh also did not depose on the other aspects of the conversation as stated by the complainant. The other person in the bathroom was an officer of the CBI namely, Shri Prem but he was not examined in the trial.

40. In his statement recorded under Section 313 Cr.P.C., the appellant had denied going to the complainant's hotel room on 16.10.2003 and stated that on 17.10.2003 he had gone to the LIC office and later that day visited the complainant's hotel room on the direction of R.S. Meena, Executive Director, who had asked him to handover a sealed file to the complainant. He denied the prosecution case for making any demand. He also stated that he was working in the accounts department of TRIFED and his duty was to look after the license work and TDS concerning the employees of TRIFED.

41. Further, in the charge sheet to support its allegations against the appellant, it was stated that on 10.10.2003, the appellant without being directed, visited the office of the Ministry of Social Justice and Empowerment to obtain a copy of the sanction order regarding reimbursement of handling charges with respect to the complainant's company. However, in his testimony Shri N. Satya Narayan, DGM, TRIFED admitted that the appellant was rather deputed to go to the Ministry to follow up the matter of the complainant's company and to

collect the sanction order. He exhibited a copy of the gate pass in this regard as Mark 'X' and also identified his signatures at point 'A' on it. He also stated that it was R.S. Meena, who was In-charge Finance and was dealing with the matter of the complainant's company. The witness stated that the appellant was only an Accountant and had no role with the clearing of the dues and the competent authority was the Managing Director, which was explained to Dr. Shaukatullah during his visit on 15.10.2003. The witness also stated that he received the sanction order from the Executive Director and he marked the same to the appellant. He further stated that the appellant had followed the normal procedure by putting the file before the Executive Director.

42. The prosecution case meets its Waterloo on the above aspect in the contradiction appearing in its case put up in the charge sheet as compared to the evidence recorded in the trial. Whereas in the complaint (Ex.PW13/A), the charge sheet and the sanction order, it was the specific case of the CBI that the whole talk about dividing the amount of Rs.4 lacs in two installments took place on 16.10.2003 and not on 17.10.2003. However, during the trial, as per the complainant's testimony, the entire conversation of splitting of amount in two installments took place on 17.10.2003 and not on 16.10.2003.

43. Further, as per prosecution case, the prime witnesses i.e., the complainant and Dr. Shaukatullah were stated to be present on 16.10.2003 and 17.10.2003 in the hotel room when the appellant is stated to have visited and demanded the bribe amount. A combined reading of their testimonies would show that Dr. Shaukatullah has not stated the material particulars of the conversation as deposed by the complainant.

So far as demand made on 16.10.2003 is concerned, he has neither given any details nor stated any amount. For the demand stated to be made on 17.10.2003 although the complainant had stated that initially Rs.4 lacs were agreed to be paid but later, the amount was agreed to be paid in two equal installments but Dr. Shaukatullah is completely silent on this aspect. He rather stated that the agreed amount was Rs.4.35 lacs. So far as the independent witness namely, Satbir Singh, stated to be hiding in the bathroom, is concerned, he has also not stated the details of conversation as stated by the complainant. Further, he did not witness the conversation but only heard it only through an earphone.

44. In A. Subair *v.* State of Kerala reported as **(2009) 6 SCC 587**, it was held that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and until that is established , the accused should be considered to be innocent.

45. In the opinion of this Court, the prosecution is duty bound to prove its case beyond reasonable doubt against the appellant by clear, cogent & convincing evidence which has not been done in the present case. In the opinion of this Court, keeping in view the above contradictions in the prosecution case, it is held that the prosecution has failed to prove the demand of Rs.4 lacs by the appellant beyond reasonable doubt and as such the appellant is entitled to the benefit of doubt.

46. Resultantly, the appeal succeeds. The appellant is acquitted. His bail bonds and surety bonds are discharged. The appellant shall however, submit bail bonds in terms of Section 437-A Cr.P.C.

47. A copy of this judgment be communicated to the trial court along with the records.

48. The appeal is disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

MAY 04, 2020