

\$~14

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

+ **CRL.REV.P. 416/2019**

STATE

..... Petitioner

Through: Ms Kusum Dhalla, APP for State.

versus

KRISHAN KUMAR

..... Respondent

Through: Mr Bablu Dixit, Advocate with Insp.
Manoj Aggarwal, Vigilance Branch.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

28.02.2020

1. The State has filed the present revision petition impugning an order dated 19.01.2019 passed by the Ld. Special Judge (PC Act)-05, ACB, Central, Tis Hazari Courts whereby the respondent was acquitted of the charges under Section 7/13(1)(d) of the Prevention of Corruption Act, 1988 (hereafter 'PC Act').

2. The proceedings against the respondent were initiated pursuant to FIR no. 22/2014 under Sections 7/13(1)(d) of the PC Act, registered with PS Vigilance. The case set up by the prosecution is that on 01.03.2014, the complainant, one Irshad Khan, while posing as a helper of one vehicle and going from Peeragarhi towards Nangloi, reached 4 number Nangloi Red light. There, he found two police officials – one head constable and one constable – on the checking duty. They stopped the vehicle of the

complainant and asked him to show the papers and entry of his vehicle. It is alleged that they demanded ₹2,500/- to allow the complainant to ply his vehicle on the said route and told him that if he doesn't pay the same, his vehicle will be seized by them. It is further alleged that after some negotiations, the police officials agreed on a payment of ₹1,500/- and the complainant paid the same. The complainant allegedly recorded a video of the entire incident. Thereafter, he filed a written complainant, alongwith the video recording, with the Anti-Corruption Bureau (ACB).

3. Investigations were conducted and subsequently, a chargesheet was filed against the respondent for the commission of offences under Sections 7/13(1)(d) of the PC Act.

4. The Trial Court considered the facts obtaining in the case and by the order on charge dated 19.01.2019, acquitted the petitioner of the offences under Sections 7/13(1)(d) of the PC Act. The Court observed that the stand taken by the complainant in his complaint was inconsistent with his statement under Section 161 of the Cr.P.C. In his complaint, he had alleged that he had paid ₹1,500/- to the police official, whereas, in his statement under Section 161 of the Cr.P.C., he stated that his associate Munna had made the said payment. It further noted that Munna, in his statement under Section 161 of the Cr.P.C., had stated that he had paid the said amount to the police officials. But, in an affidavit filed with the DCP concerned, he stated that he had not paid any bribe and the person in the video recording is his lookalike and not him. The Trial Court further observed that the voice sample of Munna had not been taken and in the absence of the same, the video recording of the alleged incident was not sufficient to prove whether

the demand and the acceptance of the bribe actually took place. The chargesheet also included the transcript of a conversation between one Devender and Munna, however, no person named Devender is charge-sheeted. And, there appeared to be no material to establish that Devender and the respondent is one and the lone person.

5. In view of the above, the Trial Court found that material on record was insufficient to take a *prima facie* view that the respondent had committed the alleged offence and, therefore, the court discharged the respondent.

6. Ms Dhalla, learned APP appearing for the State submits that the Trial Court failed to appreciate that at the stage of framing of charges, the court is not required to appreciate the evidence and has merely determine whether a *prima facie* offence is made out against the accused.

7. Admittedly, the case of the prosecution rests mainly on the video recording. However, the same ceases to have much value once the person, alleged to have made the payment, has disputed that he is the person in the video recording and there is no material to establish otherwise. As noticed by the Trial Court, even his voice samples have not been compared with the video recording. Whilst, it is trite that the court would not evaluate the evidence at the stage of framing of charges, the court has to examine the material to consider whether a *prima facie* case is made out against the accused. Given that there is a fundamental inconsistency in the statements as to who had given the alleged bribe and the principal material available in this case (video recording) is of little value; the conclusion of the court that the material on record is insufficient to *prima facie* indicate that the

respondent had committed the alleged offence, cannot be faulted.

8. The petition is, accordingly, dismissed.

FEBRUARY 28, 2020
MK

VIBHU BAKHRU, J