

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA  
CRIMINAL APPEAL NO. 02 OF 2016**

Shri Satish Kumar Kajal, s/o Shri Sahadev Singh Kajal, Major of age, Service, Married, Indian National, Occupation – the then Assistant Director, Khadi and Village Industries Commission, S. V. Road, Panaji, Goa and Manager, Khadi Gramodhyog Bhawan, Madgaon Goa, r/o. GPD 2/6 Government Quarters, Porvorim, Bardez, Goa, and permanent Address House No. 2040, Sector 3, Rohtak Haryana.

... Appellant

*V e r s u s*

State (through) Central Bureau of Investigation, The Officer in Charge, Office of the Supdt. Of Police, CBI, Anti-Corruption Branch, Bungalow No. F-1, Type – VI, GMC Quarters, National Highway NH-17, Bambolim, Goa – 403202.

... Respondents

**Mr. Nitin N. Sardessai, Senior Advocate** with *Mr. Rohan Pandurang Desai, Advocate for the Appellant.*

**Mr. Mahesh Amonkar, Special Public Prosecutor for the Respondent-State**

---

**CORAM: MANISH PITALE, J**  
**Reserved on: 10<sup>th</sup> February 2022**  
**Pronounced on: 8<sup>th</sup> March 2022**

---

**JUDGMENT**

1. By this Appeal, the Appellant has challenged Judgment and order dated 21.12.2015, passed by the Court of Special Judge, Panaji, whereby, the Appellant has been found guilty of offence under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption

Act, 1988, (hereinafter referred to as the '*aforesaid Act*'). For conviction under Section 7 of the aforesaid Act, the Appellant was sentenced to suffer imprisonment for a period of two years and to pay fine of Rs. 1,00,000/- and in default to undergo simple imprisonment for three months. For conviction under Section 13(1)(d) read with Section 13(2) of the said Act, the Appellant was sentenced to suffer imprisonment for a period of one year and to pay fine of Rs. 50,000/- and in default to undergo simple imprisonment for three months. The offences were directed to run concurrently.

2. The case of the prosecution was that the Appellant was caught red handed while accepting bribe from the complainant. The Appellant was working as an Assistant Director of Khadi and Village Industries Commission, at Panaji, and he was in charge of Khadi Gramodhyog Bhawan, as a Manager. In his capacity of holding the said offices, he was responsible for the repair work of the office of the Khadi Gramodhyog Bhawan and upon verification of completion of the works, he was required to disburse cheques towards payment for such repair and renovation work. The contract was awarded to the complainant in April 2006.

3. The complainant received part payment of ₹1,50,000/- in three cheques of Rs. 50,000/- each and after completion of the renovation work, he raised a final bill dated 27.06.2006 for ₹ 2,95,600/-. Since the complainant had received the amount of ₹ 1,50,000/-, he was supposed to receive the balance amount of ₹ 1,45,600/-. It was the case of the complainant that when he demanded payment of the balance amount, although two cheques for payment of the said amount were ready since 30.06.2006, the Appellant was refusing to hand over the said cheques to the complainant and he demanded bribe of

₹ 45,000/- to hand over the said cheques. As the complainant was not ready to pay the bribe, the Appellant allegedly told him that he will hand over a cheque of ₹ 70,000/- to the complainant, which could be encashed and ₹45,000/- be given towards the bribe and only then would the second cheque be released.

4. It is the case of the Respondent-Prosecution i.e. the State through Central Bureau of Investigation (CBI), that the complainant, in this backdrop, approached the office of the CBI on 11.10.2006 and gave a written complaint regarding the aforesaid bribe being demanded by the Appellant. On the basis of the complaint, the CBI decided to lay a trap against the Appellant and, accordingly, on 11.10.2006, a pre-trap panchanama was executed. It was the case of the CBI that the trap was executed at Hotel Fidalgo, where the Appellant was called. The complainant was given cassette recorder with micro cassettes concealed in his clothes in order to record the conversation that would take place at the time of execution of the trap. According to the CBI, the trap was executed and when the panch witnesses at the place of the trap along with the team of the CBI confronted the Appellant, he was found in possession of the currency notes.

5. On standard procedure of chemical tests being conducted on the spot, the colour of the currency notes, the hands of the Appellant and the left side pocket of the trouser of the Appellant changed colour to pink. A post-trap panchanama was executed, wherein details of execution of the trap were recorded. The micro cassettes in which the complainant had recorded the conversation with the Appellant were kept in a sealed envelope in the presence of the panchas and their signatures were taken. All the material used in the trap, including the

chemicals were collected for forensic examination and further necessary action was undertaken.

6. There were initially two persons named as accused, including the Appellant herein. But, the other accused was discharged and hence the Appellant was the sole accused person. After filing of chargesheet and framing of charges, the Respondent-Prosecution examined 16 witnesses to prove its case. The statement of the Appellant under Section 313 of the Cr.P.C. was recorded. The Appellant also gave a written statement in his defence under the aforesaid provision.

7. By Judgment and Order dated 21.12.2015, the Special Court held that the prosecution had proved its case beyond reasonable doubt against the Appellant. Accordingly, he was convicted and sentenced in the aforesaid manner. The Appellant has challenged the said Order convicting and sentencing him.

8. Mr. Nitin Sardesai, learned Senior Counsel appearing for the Appellant, submitted that in the present case, there were many contradictions in the evidence of the complainant i.e. Pw.1 and that significantly there was not even a single shadow witness when the trap was executed. The prosecution had heavily relied upon the evidence of the complainant i.e. P.w.1, as also tape-recorded conversations between the complainant and the Appellant. It was submitted that, there was no evidence to prove demand of bribe in the present case, other than the interested statements of the complainant (Pw.1) himself. It was submitted that the material on record demonstrated that the prosecution had heavily relied upon the tape-recorded conversations. But, the evidence of witnesses in that regard demonstrated that there

was no proof of voice recognition, the tapes were not actually played in the Court and there was enough material to show that the quality of sound in the tapes was itself considered to be very poor.

9. The learned Senior Counsel submitted that the law laid down by the Supreme Court as regards admissibility of tape-recorded conversations in evidence demonstrated that the same could be used only for corroboration and that direct evidence of conversation was necessary. Reference was made to Rules framed in that regard, on the basis of which it was submitted that the requirements of law were not satisfied and that the tape-recorded conversations could be of no help to the prosecution. In this regard, reliance was placed on Judgments of the Supreme Court in the case of *Mahabir Prasad Verma vs. Dr. Surinder Kaur*<sup>1</sup> and *Ram Singh & Ors. vs. Col. Ram Singh*<sup>2</sup>.

10. It was further submitted that a proper appreciation of the evidence and material on record would show that there was no evidence to prove demand of bribe on the part of the Appellant. On this basis, it was submitted that mere recovery of the currency notes from the possession of the Appellant could not lead to conviction under the said provisions of the aforesaid Act. Reliance was placed on the Judgment of the Supreme Court in the case of *P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh & anr.*<sup>3</sup>, to contend that proof of demand was a *sine qua non* for conviction of the accused. It was submitted that the Special Court in the present case failed to appreciate these aspects of the matter, while erroneously convicting and sentencing the Appellant. It was submitted

---

<sup>1</sup> (1982) 2 SCC 258

<sup>2</sup> 1985 Supp. SCC 611.

<sup>3</sup> (2015) 10 SCC 152

that the whole evidence of the complainant was riddled with contradictions and, therefore, the impugned Judgment and Order deserved interference.

**11.** On the other hand, Mr. Mahesh Amonkar, learned Additional Public Prosecutor, appearing on behalf of the Respondent submitted, that in the present case, the evidence of the prosecution witnesses clearly proved that the Appellant was found in possession of the currency notes and that the trap was successful. The prosecution had placed sufficient evidence on record to show the demand of illegal gratification/bribe on the part of the Appellant. The circumstances that were brought on record raised presumption against the Appellant under Section 20 of the aforesaid Act, which the Appellant had failed to rebut. It was submitted that the material on record was sufficient to prove the case of the prosecution and merely because there was no shadow witness to depose about the demand of illegal gratification, the Appellant did not deserve benefit of doubt. It was submitted that the Appellant was a responsible Officer, holding a high office and he had indulged in corruption, for which he deserved to be convicted and sentenced. On this basis, it was submitted that the Appeal deserved to be dismissed.

**12.** The Respondent-Prosecution in the present case, examined as many as 16 witnesses to prove its case against the Appellant. Considering the contentions raised on behalf of the rival parties and the manner in which the Special Court proceeded to convict and sentence the Appellant, the evidence of Pw.1-Jaibir Singh, i.e. the complainant, Pw.3- Dr Rajendra Singh, Pw.5 – Anurag Prakash, Pw.15-T. V. Rajesh and Pw.16-Anil Dabbas, is found to be relevant.

**13.** Pw.1, i.e. the complainant, gave detailed oral testimony before the Special Court and he was cross examined at great length. Considering that the trap was executed in October 2006 and the evidence of Pw.1 was recorded over a long period of time between the years 2009 to 2014, there were bound to be some minor discrepancies in the statements of Pw.1, when compared to other material on record. It is significant that, in the present case, it was only Pw.1 i.e. the complainant who deposed in respect of demand of illegal gratification on the part of the Appellant. Although panch witnesses were accompanying the team of the Respondent when the trap was executed, admittedly, none of the panchas were with the complainant and the Appellant at the time when either the alleged demand of illegal gratification was made or when the currency notes were actually handed over to the Appellant. Pw. 1 has deposed that he handed over the currency notes when the trap was executed and after the Appellant reiterated the demand of illegal gratification. Admittedly, there is no panch witness in the present case who has deposed that he was with the complainant when such a demand was initially made or when it was allegedly reiterated, pursuant to which the complainant handed over the currency notes to the Appellant. It is only the evidence of Pw.1, i.e. the complainant on record, to support the case of the prosecution.

**14.** It is the case of the prosecution that since tape recorder along with micros cassettes were given to the complainant and he recorded the conversation when the trap was actually executed, the tape-recorded conversations and their transcriptions were also direct evidence and that, in any case, such material corroborated the evidence of Pw.1-complainant, which was sufficient to sustain the conviction of the Appellant. In such cases concerning offences under the aforesaid

Act wherein trap is laid, the complainant is a witness who has approached the Investigating Agency claiming that the accused is demanding illegal gratification. Such a complainant is bound to depose about demand of illegal gratification by the accused. It is for this reason that when a trap is executed, shadow witnesses accompany the complainant, they depose as regards the conversation that takes place between the complainant and the accused and the nature of demand made by the accused. Evidence of shadow witnesses is significant in such cases.

**15.** In the present case, admittedly, there was no shadow witness, when the trap was executed. Therefore, it is only the evidence of Pw.1-complainant to support the case of the prosecution. As regards tape-recorded conversations, it needs to be examined as to what is the extent to which such tape-recorded conversations can be said to be admissible in evidence and the extent to which they can be relied upon as proof of the prosecution case.

**16.** In this regard, Rules for production, use and recording of tape-recorded evidence in Court framed under Article 227 of the Constitution, become relevant. The said Rules require that the party producing the tape-recorded evidence shall also produce the transcript of the tape recording along with the tape. It is further stipulated that the Court or such Officer shall hear the tape record in order to verify whether the transcript produced along with the tape is correct or not and endorse such verification on the transcript record under his signature with date. Rules also provide the manner in which the tapes are required to be kept in safe custody under the seal of the Court.

17. In the case of ***Mahabir Prasad Verma vs. Dr. Surinder Kaur*** (supra), in the context of reliance placed on tape-recorded conversations, the Supreme Court held as follows:

*“22. .... Tape-recorded conversation can only be relied upon as corroborative evidence of conversation deposed by any of the parties to the conversation and in the absence of evidence of any such conversation, the tape-recorded conversation is indeed no proper evidence and cannot be relied upon.”*

18. Thus, it is laid down that tape-recorded conversation can be relied upon as corroborative evidence of conversation and in the absence of actual evidence of such conversation, the tape-recorded conversation is not admissible evidence and it cannot be relied upon.

19. In the case of ***Ram Singh & Ors. vs. Col. Ram Singh*** (supra), the Supreme Court laid down the conditions for admissibility of a tape-recorded statement after analysing Judgments rendered in that context. In the said Judgment, the Supreme Court held as follows:

*“32. Thus, so far as this Court is concerned the conditions for admissibility of a tape-recorded statement may be stated as follows:*

*“(1) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice*

*of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.*

*(2) The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence — direct or circumstantial.*

*(3) Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.*

*(4) The statement must be relevant according to the rules of Evidence Act.*

*(5) The recorded cassette must be carefully sealed and kept in safe or official custody.*

*(6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances.”*

**20.** The aforesaid position of law makes it clear that tape-recorded conversations in evidence can be taken into consideration by the Court after the aforementioned safe guards are followed and, in any case, such tape-recorded conversations can only be relied upon as corroborative evidence.

**21.** The Special Court in the impugned Judgment and Order has relied upon the tape-recorded conversations and evidence of Pw.1-complainant to conclude that the Appellant had indeed demanded illegal gratification. At one point, the Special Court has indeed observed that the transcripts of the tape-recorded conversations are

corroborative evidence, but it is recorded by the Special Court that such corroboration in the facts of the present case was not necessary when there was direct evidence against the Appellant regarding demand of illegal gratification. The Special Court has also held that the prosecution case of demand of illegal gratification could have been properly covered by sending a shadow witness, but since the Appellant was a high level Officer, there was risk that sending a shadow witness would have alerted the Appellant.

**22.** The aforesaid approach and reasoning adopted by the Special Court needs to be tested and examined to analyze as to whether the conviction and sentence imposed upon the Appellant under the provisions of the said Act can be sustained.

**23.** It is clear from the material on record that although the currency notes were recovered from the possession of the Appellant, insofar as demand of illegal gratification was concerned, it was only the evidence of Pw.1-complainant and of no other witness to support the case of the prosecution. The corroborative nature of evidence of tape-recorded conversations, would also have to be tested on the touchstone of the safeguards required to be followed before holding that such conversations and transcripts could be said to be admissible in evidence.

**24.** In the present case, the lengthy chief examination and cross examination of Pw.1-complainant spanning from the years 2009 to 2014, would show that there are some places where the statements made by Pw.1 appear to be at variance with other material on record. Pw.1-complainant has deposed about the demand of illegal

gratification on the part of the Appellant prior to his approaching the office of the CBI to lodge his complaint. The evidence shows that it was only complainant i.e. the Pw.1, who was with the Appellant when such demands were allegedly made. A perusal of the written complaint submitted by the complainant to the office of the CBI shows that the Appellant had demanded illegal gratification of ₹ 45,000/- for handing over cheques to the complainant-Pw.1 towards payment of balance amount as per the final bill. In the complaint, it is emphatically stated that the Appellant had demanded bribe of ₹ 45,000/-.

**25.** But, a perusal of the evidence of the Pw.1-complainant shows that initially the Appellant had demanded ₹ 50,000/- towards bribe and later it was negotiated to the amount of ₹ 45,000/-. The complainant-Pw.1, nowhere stated before recording of his evidence that he had told the Appellant that the said amount would be paid in the form of cash of ₹ 20,000/- and a self cheque of ₹ 25,000/-. But, under the strain of cross-examination, the complainant-Pw.1 conceded to such contradictions. It is also relevant that the final bill amount in the present case was ₹ 2,95,600/-, even as per the case of the prosecution, of which ₹ 1,50,000/- was already paid to the complainant-Pw.1 and only ₹ 1,45,600/- was the balance amount. It was also claimed that the Appellant himself had said that he would release cheque of ₹ 70,000/- out of the balance amount of ₹ 1,45,600/-, which was due to the complainant-Pw.1. In other words, for the aforesaid balance amount, the Appellant allegedly initially demanded bribe of ₹ 50,000/-, which was later negotiated to an amount of ₹ 45,000/-.

**26.** As noted above, the demands allegedly made by the Appellant were only in the presence of complainant-Pw.1. Even on the date when the trap was executed, there was no shadow witness

accompanying the complainant-Pw.1, when he met the Appellant at the Hotel. The complainant-Pw.1 claims that at that time when only the two of them were together, the Appellant had reiterated the demand of bribe money, in pursuance of which, he gave the currency notes and the cheque to the Appellant. Again, other than the evidence of the complainant-Pw.1, there was no corroborative evidence of any shadow witness to prove such alleged reiteration of the demand, pursuant to which the currency notes and the cheque were handed over to the Appellant.

**27.** In this context, the tape-recorded conversations have been heavily relied upon by the prosecution. It is claimed that the tapes were played on the basis of which transcripts were prepared and such material was produced before the Special Court in evidence to support the prosecution case.

**28.** In connection with the evidence placed on record pertaining to the tape-recorded conversations and the transcripts, the evidence of Pw3-Dr. Rajendra Singh, Pw.5- Anurag Prakash, Pw.15-T. V. Rajesh and Pw.16-Anil Dabbas, is relevant and the evidence of these witnesses deserves consideration.

**29.** Pw.3-Dr. Rajendra Singh, was an official of the Forensic Department having experience in Forensic Voice Identification. In his examination in chief, the said witness referred to the manner in which micro audio cassettes purportedly containing conversations between the complainant and the Appellant, were received in a sealed cover. This witness has further deposed about examination of the specimen voice recording of the Appellant with the recording in the said

cassettes. In cross examination, this witness has admitted that the specimen voice and the voice in question did not have common sentences/words necessary to carry out spectographic test. It is also admitted that human voice depends on various factors like condition of health, circumstances, weather, etc., and the details of the conditions in which the voice was recorded were not sent to the said witness. He further admits that he gave his opinion based on a copy which was made from the original cassettes. Significantly, this witness admitted that he did not give confirmatory opinion in this case since he could not carry out spectographic test. It is also conceded that personal notes taken during examination of the recordings were not handed over to the Respondent-CBI.

**30.** Pw.5-Anurag Prakash, is one of the panch witnesses. He also deposed about the recordings in the micro cassettes. In examination in chief, the said witness deposed about having heard the recording from the cassettes and he deposed in support of the version of the complainant. But, in cross examination, the said witness admitted that when he visited the CBI office in the presence of the complainant, the sealed copied cassettes were played in the cassette player but the same were not working properly. It was further stated that an Officer from the All India Radio informed that there were better instruments/cassette players in the office of the All India Radio and, accordingly, all of them went to the said office for playing the cassettes. It is then claimed that both the cassettes were played in the office and conversations could be heard and, accordingly, transcripts were prepared. It is significant that the Officer of the All India Radio was not examined by the Respondent-CBI.

**31.** Pw.15-T. V. Rajesh, was the Inspector of the Respondent-CBI, to whom the complaint submitted by the complainant was marked. He has also deposed about micro cassettes being provided to the complainant. This witness claimed in his examination in chief that the cassettes were played wherein demand of bribe, prior to laying of trap was recorded and that upon playing the cassette, the said conversation could be heard. In the cross examination, this witness stated that he verified the recording, which was otherwise clear and audible except in some parts. He then stated that after hearing the recorded conversation during verification panchanama, the said cassette was sealed and thereafter this witness had no occasion to hear the conversation recorded in the cassette. It is also admitted by this witness that while hearing the conversations in the cassette at the time of verification of panchanama, he had to often rewind the cassette to hear the conversations and that no additional equipment was required to hear the conversation. It is significant that this witness admitted that he did not personally prepare the transcripts of the conversations recorded during pre-trap and post-trap panchanamas.

**32.** Pw. 16, Anil Dabbas, was also a Police Officer working with the Respondent-CBI and he was handed over the investigation in the present case. This witness in his cross examination stated that no receipt was issued by the Malkhana in charge, while handing over the cassettes to him, as only the procedure of maintaining Malkhana register was followed wherein entries were made from time to time. He further admitted that he had not verified from the register as how many times the cassettes deposited by the Police Inspector, T. V. Rajesh- Pw.15, were taken out till investigation was handed over to him. This witness then stated in cross examination that after copying contents from the micro cassettes to regular cassettes, the copied

portion in the regular cassettes was neither played nor heard by the panchas or by this witness. Both the cassettes i.e. the regular cassettes were played for the first time on the next date i.e. 30.01.2007 and, thereafter, the transcripts were prepared. The said regular cassettes were not forwarded to CFSL along with the micro cassettes to confirm that the conversation of the original and the copied cassettes was the same.

**33.** Analysis of the evidence of the aforesaid four witnesses in the context of the tape-recorded conversations and the transcriptions prepared on that basis, shows that there was difficulty in hearing the recorded conversation. While Pw.5, Anurag Prakash, one of the panch witnesses admitted that the cassettes, when played in the cassette player at the CBI office, were not working properly due to which they had to be taken to the office of the All India Radio for playing on the advanced cassette player/instrument of the office of the All India Radio, P.w.15, T. V. Rajesh, one of the Inspectors of the CBI stated that there was no need of any amplifier gadget to hear the conversations recorded in the cassettes. The CBI did not examine the Officer of the All India Radio, who was named by Pw.5, Anurag Prakash.

**34.** Pw.16, Anil Dabbas, the Investigating Officer admitted that the regular cassettes in which the contents of the recording were transferred from the original micro cassettes were not forwarded to the CFSL, along with the micro cassettes to confirm that the conversations in the original and the copied cassettes was the same. Pw.3, Dr Rajendra Singh, Forensic Voice Identification Expert, admitted in cross examination that the specimen voice and the question voice did not have common sentences/words necessary to carry out the spectographic test and that he did not give confirmatory opinion about

the voice recording, since he did not carry out spectrography test. It is crucial that this witness stated in cross examination that he gave his opinion based on a copy which was made from the original. When this statement is considered in the context of the statement given by P.w.16, Anil Dabbas, who was the Investigating Officer, that the regular cassettes which were copies from the original were not forwarded to the CFSL, there is a serious contradiction and hence a doubt is raised as to the sanctity of the transcripts prepared purportedly on the basis of the tape-recorded conversations. It is also significant that Pw.15, T. V. Rajesh, Inspector CBI, admitted in cross examination that he did not personally prepare the transcripts of the conversations recorded during pre-trap and post-trap panchanamas. There is also nothing on record to show that the cassettes were actually played in the Court for verifying that the transcripts matched with the recorded conversations.

35. The aforesaid oral and documentary evidence on record does not satisfy the tests laid down by the Supreme Court in the case of ***Ram Singh & Ors. vs. Col. Ram Singh*** (supra), concerning conditions for admissibility of a tape-recorded statement. In this case, the evidence and material on record is not sufficient to prove that the recorded voice of the speaker was duly identified by the maker of the record. The witness from the CFSL i.e. P.w.3, Dr. Rajendra Singh, admitted that he did not give a confirmatory opinion, because spectrographic test could not be carried out. The said witness gave his opinion of otherwise confirming the voice of the Appellant on the basis of copy of the original recording, while according to the Investigating Officer, Pw.16, Anil Dabbas, the copy was never sent to the CFSL with the originally recorded micro cassette. As noted above, there is nothing on record to show that the tapes were played before the Court for examining the veracity of the transcripts. Therefore, this Court is of the opinion that

the tape-recorded conversations could not have been relied upon to prove the prosecution case.

**36.** Even otherwise, the tape-recorded conversations could have been relied upon, only as corroborative evidence of conversation and in the absence of direct evidence of any such conversation in the form of a shadow witness deposing in that regard, the tape-recorded conversation could not be said to be admissible evidence and the same could not be relied upon, as held by the Supreme Court in the case of *Mahabir Prasad Verma vs. Dr. Surinder Kaur* (supra).

**37.** The manner in which the tape-recorded conversations and the transcripts prepared on the basis of the same, were sought to be brought before the Court and relied upon by the prosecution, shows that Rules framed for production, use and recording tape-recorded evidence in Court, were not followed. The said Rules mandate that the Court shall hear the tape-recorded conversation in order to verify whether the transcript produced along with the tape is correct or not and endorse such verification on the transcript record. Thus, it becomes clear that the tape-recorded conversations and the transcripts could not have been relied upon by the prosecution to prove its case.

**38.** In this backdrop, it becomes clear, that in the present case, the pre-trap panchanama as well as the post-trap panchanama, prepared on the basis of such tape-recorded conversations and transcripts, suffered from the aforesaid defect and deficiency in terms of proof expected under the relevant Rules and the said position of law. In such a situation, the only evidence pertaining to demand of illegal gratification by the Appellant, was the testimony of the complainant.

A perusal of the evidence of the complainant-Pw.1 shows that it suffers from contradictions when compared with written complaint submitted to the CBI. In such cases involving trap concerning offences under the aforesaid Act, evidence of demand of illegal gratification coming only from the complainant without any corroborative evidence has to be treated as unsafe. In the present case, there is no shadow witness and it is only the sole testimony of the complainant pertaining to demand of illegal gratification. The tape-recorded conversation and the transcripts prepared on that basis could be only corroborative evidence. But, as noted above, the same could not have been relied upon by the prosecution, in view of the serious defects concerning tape-recorded conversations and their proof. This indicates that in the present case, there is lack of evidence to prove demand of illegal gratification on the part of the Appellant.

39. In this context, the law laid down by the Supreme Court in the case of ***P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh & anr.*** (supra) assumes significance. In the said judgment, the Supreme Court has held as follows:

*“22. In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj vs. State of A.P. [(2014) 2 SCC 55], in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for*

*illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.*

*23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the*

*Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.*

**40.** Thus, it becomes clear that in the absence of proof of demand of illegal gratification, the use of corrupt and illegal means by a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand is an indispensable essentiality as held by the Supreme Court, thereby demonstrating that, in the present case, even if possession of the currency notes and the cheques were proved by the prosecution, the offences under Section 7 and 13 of the said Act, could not be said to have been proved.

**41.** But, the Special Court on the basis of the very same evidence held that these offences were proved, thereby convicting and sentencing the Appellant in the aforementioned manner. Therefore, it is necessary to examine the reasons stated by the Special Court and whether they can be sustained. A perusal of the impugned Judgment and Order of the Special Court shows that absence of shadow witness was noticed but, it was held that since the Appellant was a high level officer, there was risk in sending a shadow witness as the Appellant could have been alerted. This reasoning of the Special Court cannot be accepted. At this stage, the Special Court observed that since shadow witness could not be sent along with the complainant, the micro cassette recording and statement of the complainant could be taken as direct evidence. It has been noted above that such tape-recorded conversation can never be direct evidence. In fact, the Special Court

itself in the impugned Judgment and Award, at a later stage, stated that the transcripts prepared on the basis of the tape-recorded conversations, were only in the form of corroboration, but, there was no need to look at such corroboration because there was direct evidence available.

**42.** This demonstrates the contradictory reasoning of the Special Court. In fact, other than the evidence of the complainant, which itself suffered from contradictions, there was no evidence at all in the present case to prove that there was demand of illegal gratification by the Appellant. The evidence on record pertaining to the tape-recorded conversations and the transcripts prepared on that basis could not have been accepted in the face of the aforesaid position of law laid down by the Supreme Court. The Special Court committed an error in holding that the prosecution had proved demand of illegal gratification on the part of the Appellant on three occasions before the trap was laid.

**43.** The Special Court also erred in observing that the complainant had no reason to falsely implicate the accused. In this context, the statement in writing given by the Appellant under Section 313 of the Criminal Procedure Code (Cr.P.C.), assumes significance, wherein he stated that there were deficiencies in the work carried out by the complainant and that it was not in terms of the time limit specified for the same. The Appellant stated that on this count, there was friction between him and the complainant, particularly in the backdrop of work not being up to the required standards. It is significant that in the present case, even as per the complainant, the total amount to be paid for the aforesaid work was ₹ 2,95,600/-, of which ₹ 1,50,000/- was already paid and even with regard to the balance amount, the cheques were ready. In such a situation, the statement by the Appellant that

since there was a dispute regarding the manner in which the work was done by the complainant and there was friction between the complainant and the Appellant, can be said to be a probable. Therefore, the Special Court was not justified in holding that the complainant had no reason to lodge a false complaint against the Appellant.

44. A perusal of the impugned Judgment and Order also shows that the Special Court has placed much emphasis on Section 20 of the aforesaid Act, which pertains to presumption operating against the public servant when it is proved that he has accepted or obtained or attempted to obtain undue advantage. But, the Special Court has failed to appreciate that even if a presumption is to arise under Section 20 of the aforesaid Act, the foundational facts for raising such a presumption have to be proved. Merely proving by forensic and chemical evidence that the currency notes and cheque were handled by the Appellant, would not lead to such presumption, particularly when offence under Sections 7 and 13 of the said Act can be said to have been proved when such acceptance is proved to be in the context of a demand of illegal gratification in terms of the law laid down by the Supreme Court in the case of ***P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh & anr.*** (supra). Even otherwise, any presumption is rebuttable and such rebuttal has to be on the touchstone of pre-ponderance of probabilities. As noted above, the circumstances that have come on record, including the cross examination of the complainant-Pw1, do indicate that even if a presumption was to be raised against the Appellant, it stood rebutted by the evidence and material on record on the touchstone of the test of preponderance of probabilities. The Special Court failed to appreciate this aspect of the matter.

45. Thus, it becomes clear that in the absence of cogent evidence to prove demand of illegal gratification, the Special Court could not have convicted and sentenced the Appellant under the provisions of the said Act, by relying upon the testimony of only the complainant. The tape-recorded conversations and the transcripts prepared on the basis of the same, could not have been admitted in evidence in terms of the aforesaid position of law. Since the very basis of proving offence under Sections 7 and 13 of the aforesaid Act could not be proved by the Respondent-prosecution beyond reasonable doubt, the Special Court could not have convicted and sentenced the Appellant in the present case.

46. In view of the above, it is found that the impugned Judgment and Order passed by the Special Court is unsustainable.

47. Accordingly, the Appeal is allowed. The impugned Judgment and Order is quashed and set aside and the Appellant is acquitted of the offences under the said Act.

48. Bail bonds of the Appellant shall stand discharged.

**MANISH PITALE, J**

ANDREZA PEREIRA  
Digitally signed by ANDREZA PEREIRA  
Date: 2022.03.08 15:53:08 +05'30'