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

\+ Crl.A.436/2001

Judgment reserved on : 10.07.2020
Date of decision : 20.07.2022

B. TIWARI .....Appellant

Through: Appellant in person through VC.
Ms. Rebecca John, Sr. Advocate with Mr. Kamal Kant Jha &Ms. MeghaBahl, Advocates.

versus

STATE THR. CBI ..... Respondent

Through: Mr. Mridul Jain, SPP for CBI.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant B. Tiwari, S/o Sh. P.S. Tiwari vide the present appeal assails the impugned judgment dated 19.05.2001 of the Special Judge, THC, Delhi in RC No.40(A)/93-DLI whereby the appellant herein, posted as Assistant Manager of the Delhi State Industry Development Corporation and co-accused Mr. R.K. Pandey, a private person were both held guilty of the commission of the offences punishable under Sections 120B of the Indian Penal Code, 1860, r/w Sections 7, 13 (2), 13(1)(d) of the Prevention of Corruption Act, 1988

for having entered into a criminal conspiracy to receive illegal gratification for showing a favour to Mr. Satish Kumar (the complainant) in pursuance of which conspiracy, the appellant herein being a public servant abused his official position and demanded a sum of Rs.2,000/- from the complainant by directing him to hand over the bribe money to the accused no.2 i.e. Mr. R.K. Pandey who accordingly accepted the same other than legal remuneration on 11.06.1993.

2. As per the prosecution version, the complainant Mr. Satish Kumar had visited the Khichripur Office of DSIDC for taking possession of a working shed No.40 allotted to him by the DSIDC in Khichripur, for which on 08.06.1993, the accused no.1 i.e. the appellant herein had as per the complaint made a demand for illegal gratification and agreed to accept a sum of Rs.2,000/- from the complainant to be paid on 11.06.1993 for giving possession of the said shed.

3. The appellant also assails the impugned order on sentence dated 19.05.2001 whereby the appellant herein, the public servant was sentenced to undergo Simple Imprisonment for two years for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and was directed to pay a fine of Rs.5,000/- and in default to undergo Simple Imprisonment for two (2)months qua the offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act 1988, the appellant herein was sentenced to undergo Simple Imprisonment for one year and to pay a fine of Rs.3,000/- and in default of the payment of the said fine, to further undergo Simple

Imprisonment for one month. The appellant was also sentenced to undergo SI for one year and to pay a fine of Rs.1,000/- or in default to further undergo SI for 15 days for the offence punishable under Section 120B of the Indian Penal Code, 1860, with it having been directed vide the impugned order on sentence that all substantive sentences would run concurrently and he would also be entitled to set off for the period of detention he has undergone during the investigation or trial of the case.

4. The co-convict R.K.Pandey found guilty of the offence punishable under Section 120B of the Indian Penal Code, 1860 was sentenced to undergo SI for one year and to pay a fine of Rs.1,000/- and in default, to further undergo SI for a period of 15 days.

5. Vide the impugned order on sentence dated 19.05.2001 itself, the appellant herein and the co-convict were granted bail for filing the appeal against the impugned judgment and sentence.

6. Vide order dated 20.06.2001 in Crl.M.A.1327/2001, the appellant herein was allowed to be released on bail during pendency of the appeal on furnishing a personal bond in the sum of Rs.15,000/- with one surety of the like amount to the satisfaction of the Special Judge.

7. Vide order dated 23.08.2001, Crl.A.436/2001 assailing the impugned judgment and impugned order on sentence both dated 19.05.2001 was admitted for hearing. The records indicate that Crl.A.388/2001 filed by the co-convict R.K.Pandey had since abated on 21.08.2013 in view of his demise.

8. The prosecution version as set forth through the charge sheet dated 10.06.1993 *inter alia* states to the effect that the appellant herein was an Assistant Manager at DSIDC, Khichripur, Delhi and was in charge of the DSIDC site located at Khichripur, Himmatpuri and Trilokpuri etc. and when Mr. Satish Kumar, the complainant visited the Khichripur office on 08.06.1993 for taking possession of a shed No.40 allotted to him by the DSIDC in Khichripur, the appellant herein demanded and agreed to accept the sum of Rs.2,000/- from Mr. Satish Kumar to be paid on 11.06.1993 for giving possession of the said shed but since the complainant Mr. Satish Kumar did not want to pay the bribe, he lodged the written complaint on 10.06.1993 with the Superintendent, CBI, Anti Corruption Branch, New Delhi, on the basis of which, the case RC 40(A)/93-DLI was registered. Mr. SK Peshin, Inspector, CBI after securing presence of two independent witnesses named Mr. Jagdish Chandra, Asstt. Grade-I and Mr. Suraj Prakash, Messenger both of the Food Corporation of India, Delhi and another CBI officer constituted a raiding party on 11.06.1993. A sum of Rs.2,000/- was stated to have been brought by Mr. Satish Kumar, the complainant to be given to the appellant herein Mr. B. Tiwari as a bribe money. The witnesses were apprised of Mr. Satish Kumar, the complainant who are stated to have satisfied themselves qua the genuineness of the complaint. As per the prosecution version set forth through the charge sheet, a practical demonstration was given to show the reaction of the phenolphthalein powder with the colourless solution of sodium carbonate and the G.C. note numbers were recorded in the annexure which notes were also then treated with

phenolphthalein powder and were kept with Mr. Satish Kumar, the complainant with instructions to him to hand over the bribe money to the appellant on specific demand. It is indicated through the charge sheet that all formalities were reduced in writing in the handing over memo prepared at the spot.

9. It is stated further through the charge sheet that the raiding party left the CBI office and reached the office of the appellant at Khichripur around 12:15 (AM) (it is apparent that it is a technical error and ought to be read as 12:15 PM). As per the prosecution version, Mr. Satish Kumar, the complainant along with Mr. Suraj Prakash, shadow witness entered the office of the appellant whereas the other members took suitable position at the spot and after a few minutes, Mr. Satish Kumar, the complainant and Mr. Suraj Prakash, the shadow witness came and informed that Mr. B. Tiwari, the appellant herein was at his Himmatpuri office and Mr. R.K.Pandey, security guard had informed that the appellant had asked him to receive Rs.2,000/- from Mr. Satish Kumar, the complainant but the said money had not been paid to him. The raiding party accompanied by Mr. Satish Kumar, the complainant is stated to have proceeded to the Himmatpuri office and reached there around 12:45 PM where Mr. Satish Kumar, the complainant along with Mr. Suraj Prakash, the shadow witness entered the office of the appellant at Himmatpuri and other members of the trap party took suitable position. At about 1:15 PM, Mr. Satish Kumar, the complainant and Mr. Suraj Prakash, the shadow witness came out and informed that Mr. B. Tiwari, the appellant herein had enquired from Mr. Satish Kumar whether he had

brought the money. The complainant had informed Mr. B Tiwari, appellant herein had retained his identity card and allotment letter and directed him to procced to Khichripur office and he would hand over the possession of the shed to him there as a consequence of which, the raiding party along with Mr. Satish Kumar, the complainant proceeded to Khichripur office and reached there around 1:30 PM. Mr. Satish Kumar, the complainant and Mr. Suraj Prakash, the shadow witness were directed to go to the office of the appellant at Khichripur and on doing so, the appellant again asked Mr. Satish Kumar, the complainant to come to the Himmatpuri office and Mr. R.K.Pandey (co-convict against whom the appeal has since abated) was also asked by B. Tiwari, the appellant herein to come to his office at Himmatpuri office.

10. As per the prosecution version set forth through the charge sheet, this information was communicated to the raiding party by Mr. Suraj Prakash, the shadow witness and the raiding party thus again reached the Himmatpuri office at about 2:10 PM and Mr. Satish Kumar, the complainant along with Mr. Suraj Prakash, the shadow witness entered the office of Mr. B. Tiwari at Himmatpuri along with Mr. R.K.Pandey, co-convict and around 2:25 PM, Mr. Suraj Prakash, the shadow witness gave a pre-appointed signal and the trap party members along with Mr. Jagdish Chandra, another witness rushed towards the office of B. Tiwari and apprehended him and Mr. R.K. Pandey by their wrists. Mr. Suraj Prakash, the shadow witness informed that the bribe money was demanded by Mr. B. Tiwari and Mr. Suraj Prakash to hand over the bribe amount of Rs.2,000/- to

Mr.R.K. Pandey, security guard and accordingly, Mr. Suraj Prakash handed over the money to Mr. RK Pandey who accepted the same. It is stated further through the charge sheet that the money had been taken by Mr. R.K. Pandey through his right hand and was kept in the left upper side shirt pocket and during this transaction, one Mr. Ved Ram, peon, DSIDC was also present at the office of the appellant B Tiwari who had overheard the conversation regarding the bribe made by Mr. B. Tiwari. The bribe amount was stated to have been recovered from Mr. RK Pandey by Mr. Jagdish Chandra, the witness. The handing over memo was given to both witnesses to compare the numbers of the recovered G.C.notes and it was informed by the witnesses after checking that the numbers were exactly tallying with those recorded in the handing over memo. It is stated through the charge sheet that the finger wash of the right hand and left side upper shirt pocket wash of Mr. R.K. Pandey was taken which gave the positive result by turning pink in colour. The recovery memo was stated to have been prepared at the spot with necessary formalities which was signed by the witnesses and a site plan of the occurrence was also prepared.

11. The requisite sanction for prosecution of the appellant herein, the public servant under the Prevention of Corruption Act, 1988 was accorded by Mr. Omesh Saigal, Managing Director of DSIDC vide order dated 13.08.1993, the original of which is on the record exhibited as Ex.PW2/A. The said sanction was accorded under Section 19(1) (c) of the Prevention of Corruption Act, 1988 by Mr. Omesh Saigal for prosecution of the appellant herein in as much as Mr.

Omesh Saigal was the Competent Authority to remove the said B. Tiwari, Assistant Manager of the DSIDC from the office.

12. In support of the prosecution version, the State examined 12 prosecution witnesses.

13. The accused through his statement under Section 313 of the Cr.P.C, 1973 dated 19.09.2000 affirmed the factum that he was working as an Assistant Manager, DSIDC at Khichripur in the year 1993 and that as per record, the shed was allotted to the complainant, qua which, the appellant herein had stated in response to the query that shed no.40, Khichripur had been allotted to him against the payment of Rs.6,000/-, to which, the accused had stated as per record, it was shed no.**90** which had been allotted to the complainant and not shed no.40. The appellant however denied that he had made any demand of Rs.2,000/- from the complainant Mr. Satish Kumar to give him possession of the shed and also denied that he had asked the complainant to make arrangement for payment of money at the earliest since a long time had elapsed from the date of issuance of the possession letter and that if he would not do so, he would get the allotment cancelled.

14. The appellant herein denied that at the Himmatpuri office, Mr. Satish Kumar, the complainant and Mr. Suraj Prakash entered his office and that he had enquired from him and demanded bribe money from the complainant. The appellant further denied that he had stated to PW-1 that "*Thik hai tumhara kam karunga tum kayon aye, Pandey ko bhej dete, de diya jo dena tha*" and stated that there was no such opportunity at all as the trap team had barged into his room along with

the complainant. The appellant herein had also denied that PW-1 had stated that "Aap possession letter batao phir main pese dunga, Pandey ko bich main kayon rakhte ho, aap ne possession letter dena hai or muje ap se kabja lena hai" and stated that no such talk took place.

15. The accused appellant herein also denied that in response to question no.46 that he had told PW-1 that "*paise Pandey ko do. Tum site office par mujhe milo main tumko wahin aa kar chabi aur possession letter de doonga*". The accused also denied in response to question no.47 that PW-1 had told him that all the papers were given to him, on which he had stated that "*Pata nahin madam kahan rakh gai hai*" and rather stated that no papers were given to him. The accused also denied that he had called any security guard and had given him Rs.10 for getting photocopies of the identity card and possession letter made. The accused had thus denied all incriminating evidence led again him but admitted that his personal search had been conducted vide the memo Ex.PW4/A. *Inter alia* the accused stated that sanction for his prosecution accorded vide Ex.PW2/A had been accorded mechanically without application of mind and that the witnesses who had deposed against him were procured and interested witnesses and deposed under the pressure of the CBI.

16. ***Inter alia* the appellant herein stated that it was a false case falsified by the documents filed by the prosecution itself and stated that the case had been foisted upon him as he had refused to hand over possession without proper instruction and valid document. In his defence, the appellant herein produced two witnesses i.e.DW-1**

Mr. Dinesh Khetarpal and DW-2 Mr. AK Prabhu, both Deputy Managers, CWC, DSIDC.

17. During the course of the present appeal, submissions were made on behalf of the appellant and the CBI. Whereas on behalf of the appellant it has been submitted that the impugned judgment and the impugned order on sentence were wholly infirm qua the appellant, on behalf of the CBI it was urged that there was no infirmity whatsoever in the impugned judgment.

18. Oral submissions were made on behalf of the appellant and written submissions were also submitted on behalf of either side.

CONTENTIONS OF THE APPELLANT

19. It was submitted on behalf of the appellant that the appellant is a victim of unreasonable annoyance of the complainant, PW-1 who was not given the possession of shed No.40 by the appellant for the reason that the duplicate allotment letter dated 29.09.1992, Ex. PW1/B produced by the complainant contained shed No.90 in place of shed No.40 and the appellant who had joined the Khichripur office only on 17.03.1993 had not received any official communication qua the allotment of shed No.40 to the complainant. *Inter alia* on behalf of the appellant it has been submitted that the appellant being an Assistant Manager in DSIDC, he had asked the complainant as to where was the original letter of allotment and told him that the possession of shed No.40 would be given to him after the correction of shed No.90 in the allotment letter, which fact was admitted by PW1 during his cross examination. It was submitted on behalf of the appellant that there was

no shed No.90 at the Khichripur site and it had been proved through DW2 that there were only 60 sheds at the Khichripur site.

20. It was submitted on behalf of the appellant that the testimony of PW1 through cross examination indicates that on the date of the CBI raid i.e. 11.06.1993, the duplicate allotment letter dated 29.09.1992 contained shed No.90 and this correction was made on 15.06.1993 in the office of CBI in his presence. It has been submitted on behalf of the appellant that he is a victim of the complainant's connection and acquaintance with some CBI official and thus a false complaint was lodged against the appellant and the process of law and the CBI machinery had been abused and misused; that there was prejudice in the approach of the CBI officials to arrest and prosecute him without knowing the actual facts including of the manipulation and interpolation.

21. *Inter alia* it has been submitted on behalf of the appellant that the CBI officials formed a raiding team for laying a trap with the sole intention to anyhow implicate the appellant in a false and fabricated bribery case and that the CBI officials illegally introduced one character named Mr. RK Pandey in this false case and alleged that the bribe money was given to Mr. Pandey (co-convict who has since expired and against whom the appeal has been abated) on the direction of the appellant and the money was recovered from his pocket when the trap was laid. It has been submitted on behalf of the appellant that in fact, Mr. Pandey was not at the Himmatpuri office and he was arrested from the Khichripur office after arresting and bringing the appellant from the Himmatpuri office to the Khichripur office and the

CBI officials had deliberately not got the recording done of the alleged conversation of demand.

22. It has been submitted *inter alia* on behalf of the appellant that there was no relation or connection of any sort between the appellant and Mr. RK Pandey and the appellant had never talked to Mr. Pandey regarding anything either in his office or anywhere else at any point of time directly or indirectly prior to and after the date of the incident dated 11.06.1993 and the prosecution has failed to prove any connection between them and also of any conspiracy as alleged. It has been submitted on behalf of the appellant that the bare perusal of the entire evidence reveals that the prosecution is silent about any relation between the appellant and Mr. Pandey and also there was nothing to indicate that any conspiracy was hatched by them against the complainant to take money from the complainant. On behalf of the appellant it has been submitted that in fact, when the appellant was in his Himmatpuri office on 11.06.1993, 5 to 6 CBI officials alongwith the complainant entered in his office and started saying that he had taken bribe from the complainant and when the appellant denied the same and said that he had not taken bribe from any person, one CBI official slapped him and took him out of his office forcibly and later on brought him to Khichripur office and Mr. Pandey was not even present at the Himmatpuri office of the appellant at any point of time as alleged through the prosecution version.

23. On behalf of the appellant it has been submitted that the CBI officials manipulated the document specifically Ex. PW1 /B and recorded the statements of some persons of their choice without their

consent and knowledge, which has been so stated by PW4 through his cross examination and the charge sheet has been filed in this case without conducting a fair, proper and honest investigation and without considering the fact that the appellant was right and he could not give possession of the shed No.40 to the complainant as he had produced a duplicate allotment letter which contained shed No.90 and there was a possibility that the complainant had lodged a false complaint.

24. It has been submitted on behalf of the appellant that the co-convict Mr. Pandey had submitted an application before the learned trial Court for production of Mr. Virendra Singh, PW7 as his defence witness and Mr. Virendra Singh submitted an application before the learned trial Court that Mr. Pandey had joined his office in the month of April, 1993. It has been submitted on behalf of the appellant that the prosecution evidence did not establish any criminal conspiracy between the appellant and Mr. Pandey against the complainant, neither for demand nor acceptance by the appellant nor for any recovery from the appellant and that the impugned judgment was wholly infirm.

25. It was *inter alia* submitted through para 12 of the written submissions of the appellant to the effect:

> *"12. The appellant filed the present appeal challenging the legality of the impugned judgment and order on sentence dated 19.05.2001 on various grounds which go to the root of the case and make the appellant hopeful of getting success in the appeal. The appellant relies on the grounds of appeal, particularly, grounds Nos.3(presumption under section 20 of PC Act-illegal), 4(PW 10 i.e. the recovery witness has stated in his cross examination that he is a witness in 3-4 CBI cases), 5(prosecution story stands controverted),6(why. was the*

case not registered on 09.06.1993 by CBI),7 (manipulation in Ex. PW1/B), 8(contents of Ex.PW1/B i.e. date of 29.09.1992 and shed No.90 on the date of raid), 9(joining of the appellant on 17.03.1993), 10(statements of TLO and IO are not believable), 11 (shed No. 90 was appearing on Ex. PW1 /B on the date of raid), 12(theory of demand and acceptance controverted), 13(correction from 90 to 40 only on 15.06.1993), 14 (statement of independent witness Ved Ram- PW4 during his cross examination(there is typographical error and pw4 has been typed as PW7), 15(Statement of PW5-shadow witness, during his examination in chief on 13.02.1996. However, he was directed to be cross examined by Ld. APP on 13.02.1996 but he appeared in the court for examination and his cross examination on 31.08.2000 after more than four and half years that too, after the completion of all PWs including both the IOs."

26. Further submissions made on behalf of the appellant were to the effect that there are interpolations/ cuttings/over-writings in the allotment letter where the shed number 40 is mentioned above the number 90; that PW1 stated in his examination in chief on 31.07.1995 that ,"*I have seen document Ex. PW1/B and it bears the signature of both the independent witness on right top corner & which is signed in my presence. They had signed this document at the CBI office itself"*; that PW1 stated on the same day i.e. 31.07.1995 during his cross examination that "*correction in the possession letter Ex. PW1/Bwas made on 15.6.1993. The correction in the possession letter has been made by Shri Coomar on 15.6.1993 in my presence"*; that PW5 Suraj Prakash, shadow witness has stated during his cross examination on 31.08.2000 that he had gone through the document Ex.PW1/B after

laying of the trap and had stated that it was correct that the work space number was mentioned as 90 and not 40 when it was seized after the trap; that PW10 had stated during his cross examination on 21.01.2000 that it was correct that in Ex.PW1/B-1 the booth No. is mentioned as 90 at mark X and it was the only number mentioned at that time and that PW12 confirms that the work space number was mentioned as 90 and not 40 on the date when investigation was handed over to him.

27. **It has been submitted on behalf of the appellant that in view of the unanimity amongst the prosecution witnesses that the shed number 40 had not been formally allotted to PW1, the substratum of the prosecution case collapses as it had attempted to prove that all formalities qua shed number 40 were over and the letter had been marked to the appellant for handing over possession. The appellant further submits that an examination of Ex.PW1/B and the statement of the official witnesses i.e.PW3 and PW6 clearly showed that it was unclear who wrote the petitioner's name in the bottom half of the said document and a reasonable inference can be drawn that the same had been inserted after the raid to implicate the appellant. It has been submitted on behalf of the appellant that he had questioned the giving of the allotment that he was in no position to help PW1 by virtue of the fact that PW1 was relying on an incorrect shed number which was not even in existence and till such time that he got it corrected, the appellant was not in a position to hand over possession and PW1 himself admitted that the appellant told him to get the corrections made**

with regard to the shed number before possession of any shed is handed over to him.

28. The appellant further submitted that the cross examination of PW3 also made it clear that the prosecution clumsily made corrections on the document after the raid and sought to impose a theory that the document existed in its corrected form prior to the raid. It is submitted on behalf of the appellant that PW3 has conceded that the dates appearing on the letter were wrongly written by him and he has sought to explain the same as a bonafide mistake and PW6 has also conceded that the date appearing on the letter is 19.06.1993 at point B. The appellant further submits that there is also interpolation in the date at Mark on Ex. PW1/B where the digit 6 had been changed to 5 to suit the case of the prosecution.

29. Reliance is sought to be placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in ***G. V. Nanjundiah vs State (Delhi Administration)1987 Supp. SCC266***with specific reference to observations in paras 26 & 27, which read to the effect:

> *"26. In the instant case, the foundation of the prosecution case of the demand made by the appellant for bribe has, as -observed already, been shaken to a great extent. In any event, it casts a grave doubt on the subsequent event that was alleged to have taken place in the matter of giving of bribe to the appellant and recovery of the bribe money from him coupled with the unusual behaviour of the contractor in purchasing sweets and fruits for the appellant on the plea that it would justify the presence of Verma at the time of giving of bribe to the appellant.*
> *27. In our opinion, therefore, the prosecution has not been able to prove the guilt of the appellant beyond all doubts .... "*

30. On behalf of the appellant, it has been submitted that the appellant had taken over as Assistant Manager of the DSIDC on 17th of March 1993 and the letter was never addressed to him and was rather addressed to some A.K. Mishra and PW3 confirmed that the appellant was posted only in April,1993, which was after the allotment was over and DW2 had deposed that the appellant had joined CWC on 17.03.1993 and the original order was brought in Court as Ex. DW2-DB.

31. Inter alia it has been submitted on behalf of the appellant that there was inconsistency in the testimonies of the prosecution witnesses in relation to the time of arrival of the CBI team for trap proceedings in as much as PW1 has stated that the trap team left the CBI office on11.06.1993 at about 11.30 AM for Khichripur office and reached at about 12.50PM and that PW-5 however stated that the team reached the DSIDC office at 12.30 PM and the shadow witness was not sure which office they had gone to and also mentioned about going to the residence of the appellant at 4PM that day.

32. It has been submitted on behalf of the appellant that on the contrary PW4 who was posted at the Himmatpuri office said that at 11 AM itself, he saw a few persons purportedly the complainant included with the appellant and the PW10 on the other hand stated that the team reached Khichripur DSIDC office at about 12/12.15pm.

33. On behalf of the appellant, it has been urged that PW1 stated that the appellant was not found at the Khichripur office and he was not at his seat and they went to meet him at the Himmatpuri office and

Mr. Pandey was also present at Himmatpuri. However, the shadow witness PW-5 stated that the appellant arrived at the Khichripur office after some time and said *"haan satish kya haal chaal hai*" and asked them to come to the Himmapuri office and unlike PW1, he did not mention the presence of Pandey in Khichripur office. The appellant further submits that PW10 also contradicted PW5 and stated that they were informed that the appellant was not at the Khichripur office and was at the Himmatpuri office but he contradicted both PW1 and PW5 when he stated that upon reaching Himmatpuri office, the appellant asked them to meet him at the Khichripur office again and thereafter he stated that upon reaching there, the team was again informed to go to the Himmatpuri office for handing over of the bribe money.

34. *Inter alia* it has been submitted on behalf of the appellant that whereas PW1 had stated that the co-accused Pandey asked him to hand over the money at Khichripur when the trap team landed there in the first instance, this fact was not corroborated either by PW-5 or PW-10 both shadow witnesses. *Inter alia* it has been submitted on behalf of the appellant that even in relation to the aspect as to where the bribe money was kept, there are inconsistencies in as much as the PW1 stated that when he met the appellant at the Himmatpuri office, he was asked by the latter to handover the money to RK Pandey and on receipt of the money, Pandey kept it in his left shirt pocket, however, PW5 stated that on the appellant's directions, the bribe money was handed over by the complainant to Pandey who accepted the currency and handed it over to the appellant and according to PW5, Pandey handed over the money to the appellant who then kept the same in his upper left side pocket and PW4 who was posted at Himmatpuri office in fact went on to state that he heard the appellant saying "*Main paise nahi leta ... mujhe paise nahi chahiye"*.

35. ***Inter alia* the appellant submits that there are discrepancies even in relation to the aspect of recovery of the tainted money in as much as PW10 stated that bribe money was recovered from the upper pocket of the shirt of Pandey which he was wearing at that time and the accused Pandey took the defence that there was no shirt in the security guard uniform which he was supposed to wear as part of his duties. It has been submitted on behalf of the appellant that in his statement under Section 313 Cr.P.C, 1973, it was stated by Pandey that he was employed by Sh. Virender Singh, as a security guard on the main gate of DSIDC office of Khichripur and he was wearing his security dress on the alleged date of incident and the shirt produced in Court did not belong to him, and was also not worn by him on the alleged day of incident.**

36. It has been submitted on behalf of the appellant that the prosecution story has faltered with respect to the number of times the trap team went to Khichripur and Himmatpuri and the sequence constructed thereupon and that the prosecution story has also faltered on who took the money and put it in his pocket and in the light of these facts there is no consistent and independent corroboration about the manner in which the events played out on 11.06.1993. Further submissions were made on behalf of the appellant that this aspect becomes more relevant in the light of the statement made by PW4 in cross examination where he has clearly stated that the appellant refused to accept the money. PW4 who was posted at Himmatpuri office has stated that he heard the Appellant saying, *"Main paise nahi leta ... mujhe paise nahi chahiye.*

37. *Inter alia* the appellant submits that vide the verdict of the Hon'ble Supreme Court in ***Pannalal Damodar Rathi v State of Maharashtra [1979 (4) SCC 526],*** it was clearly stated that the complainant cannot be placed on any better footing than an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon and reliance is placed on the observations in the said verdict, which read to the effect:

> *"There could be no doubt that the evidence of the complainant should be corroborated in material particulars After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon.*
> *....."*

38. It has been submitted on behalf of the appellant that on all material aspects, there are two versions that are coming forth within the same prosecution case in relation to the following:

> *"a) The status of letter Ex. PW1/B on the date of trap,*
> *b) The version given by PW1 is contrary to version by PW5,PW6, PW10 and PW12. No explanation has been forthcoming from the prosecution as to why such serious interpolations and fabrications were required to be made in this letter.*
> *c) There are two versions within the same prosecution case with respect to who made the corrections relating to*

the shed number. PW3 and PW5 both seem to suggest that they made the corrections.

d) There are two versions with respect to the chronological sequence of events on the day of the trap, for instance, even on the aspect of how many times did the trap team go to Khichripur and Himmatpuri. PW1 speaks in direct contradiction to PW5, and further PW1 and PW5 are not supported by PW10.

e) Was the demand ever made? While the demand made on08.06.1993 is not corroborated by anyone, the demand on the 11.06.1993 is disproved by PW4 in his cross examination.

f) There are two theories with respect to who put the money in his pocket. PW5 has given a version which is not corroborated by the other members of the trap team. His subsequent version appearing on pages 169 onwards was given on 31.08.2000 almost four years and six months after his earlier version recorded on 13.02.1996 and such evidence must be viewed with circumspection and care and must be disregarded completely."

39. It has been submitted on behalf of the appellant that where there are two contrary sets of evidence, the Court cannot sustain the conviction on such untrustworthy evidence with reliance having been placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in ***Harchand Singh & Anr v State of Haryana [1974 (3)SCC 397]*** wherein it was observed to the effect:

"The function of the court in a criminal trial is to find whether the person arraigned before it as the accused is guilty of the offence with which he is charged. For this purpose the court scans the material on record to find whether there is any reliable and trustworthy evidence upon the basis of which it is possible to found the

> *conviction of the accused and to hold that he is guilty of the offence with which lie is charged. If in a case the prosecution leads two sets of evidence, each one of which contradict and strikes at the other and shows it to be unreliable, the result would necessarily be that the court would be, left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. Inevitably, the accused would have the benefit of such a situation."*

40. *Inter alia* it has been submitted on behalf of the appellant that if the provisions contained in Section 120A of the Indian Penal Code, 1860, which talk about the criminal conspiracy are taken into consideration, it can be safely concluded that the appellant and R.K. Pandey cannot be held guilty under Section 120B Indian Penal Code, 1860, and moreover, this fact has also been considered by the Ld. Trial Court and it was mentioned in para 77 of the impugned judgment that, ***" ... There is not even a whisper in the testimony of any of the witnesses that there was an agreement between the two accused for demanding or accepting illegal gratification ... "***

41. It has been submitted on behalf of the appellant that the inferences are normally deduced from acts of parties in pursuance of a purpose in common between the conspirators and there must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. The appellant also stated that in the present case, the complainant himself has stated during his cross examination by counsel for Mr. Pandey, *"It is correct that accused R. K. Pandey has no role to play in regard of handing over possession letter to me.*

It is correct that there was no point in giving bribe to accused R. K.Pandey. I gave the money to accused R. K. Pandey on the direction of accused Tiwari."

42. It has been submitted on behalf of the appellant whilst placing reliance on the verdict of the Hon'ble Supreme Court in ***Dashrath Singh Chauhan v CBI [2018 SCC Online SC 1841]*** with specific reliance on the observations in para 29, which reads to the effect:

> *"29) It is for the reason that in order to prove a case against the appellant, it was necessary for the prosecution to prove the twin requirement of "demand and the acceptance of the bribe amount by the appellant". As mentioned above, it was the case of the prosecution in the charge that the appellant did not accept the bribe money but the money was accepted and recovered from the possession of Rajinder Kumar-co-accused (A 1)."*

to thus submit that the provision of Sections 7 & 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 cannot apply to the instant case and the appellant cannot be held guilty under these sections as he has committed no offence whatsoever thereunder.

43. *Inter alia* it has been submitted on behalf of the appellant that the learned trial Court failed to appreciate that the appellant, being an Assistant Manager of DSIDC posted at Khichripur office, was duty bound to tell the complainant to wait for the coming of the official communication to him qua the allotment of Shed No.40 to him and

the complainant had produced a duplicate allotment letter dated 29.09.1992 which contained shed No.90 but the complainant was asking for the possession of shed No.40, therefore, the complainant was told that the possession of shed No. 40 would be given to the complainant after the correction is made by the competent authority which fact was admitted by the complainant. *Inter alia* it has been submitted on behalf of the appellant that the appellant was not in a position to give the possession of shed No.90 which was mentioned in allotment letter Ex.PW1/B as there were only 60 sheds there and the appellant was not in a position to give possession of shed No.40 as the allotment letter was containing the shed No.90 and that the appellant never demanded anything from the complainant and did not tell the complainant to give the money to Mr. Pandey as alleged and none of the ingredients of a bribery case i.e. demand, acceptance and recovery is found available against the appellant nor was there anything to indicate that the prosecution has been able to establish that the appellant had obtained anything in order to secure pecuniary advantage to him and it was thus submitted that the presumption under Section 20 of Prevention of Corruption Act, 1988 drawn against the appellant by Ld. Trial Court is erroneous. The appellant thus submitted that he be acquitted.

CONTENTIONS OF THE RESPONDENT CBI

44. The CBI through oral submissions and as submitted through its written synopsis dated 12.10.2020 submitted to the effect that the appellant whilst being posted and functioning as Assistant Manager, DSIDC, Delhi demanded bribe/illegal gratification of Rs.2000/- from

the complainant (PW-1) for giving the possession of working shed allotted to the complainant and that the accused/appellant- B Tiwari further directed the complainant to hand over the bribe money to Sh. R.K. Pandey, the accused no.2 since deceased. It has been submitted by the CBI that the prosecution had proved its version against the appellant beyond a reasonable doubt and that the complainant/ PW-1 had proved the initial demand as well as demand of bribe on the day of trap i.e. on 11.06. 1993.

45. It has been submitted on behalf of the CBI that PW-1 Satish Kumar i.e. the complainant had deposed that after showing the possession letter and the identity card, he asked accused B Tiwari about the possession of the shed to which the accused B Tiwari replied that PW-1 would have to pay Rs.2000/- and only then he would get the possession of the shed. It was further submitted by the CBI that PW-1 had also deposed that the accused Tiwari asked him as to whether he had brought the money and he replied yes, he had brought the same and he further deposed that thereafter the accused Tiwari i.e. the appellant herein again told him that it did not matter and that he should hand over the money to the accused Pandey and that thereafter, he, PW-1, the complainant had handed over the bribe money i.e. Rs.2000/- to the accused Pandey who accepted the bribe money from his right hand.

46. The CBI further submits that the version of the complainant has also been corroborated by PW-4 Sh. Ved Ram, a chance witness working in the office of the accused B. Tiwari and the said fact had been further corroborated by the shadow witness i.e. PW-5 Sh. Suraj

Prakash and that the accused RK Pandey had accepted the bribe/ illegal gratification on behalf of the appellant herein i.e. B Tiwari as the complainant was instructed by B Tiwari i.e. the appellant herein to hand over the bribe money to Pandey.

47. The CBI further submits that the recovery of the gratification money had been duly proved through the testimony of PW-10 Sh. Jagdish Chand, the recovery witness who deposed that, "*I was directed to recover bribe amount of Rs.2000/- from the pocket of Pandey which were recovered by me from the upper pocket of shirt of Pandey which he was wearing at that time.*"

48. A further contention raised by the CBI is to the effect that the complainant and the witnesses had duly proved the complaint dated 10.06.1993, the handing over memo dated 11.06.93, the recovery memo dated 11.06.93 and that the details of the trap proceedings had been mentioned in the handing over memo and recovery memo and that the complainant had also proved the allotment letter of the working shed. It has further been submitted by the CBI that the allotment letter dated 29.09.92 issued by the Deputy Manager, DSIDC for allotment of the work shed to the complainant had been proved by the then Deputy Manager, DSIDC PW-6 R K Dotania, and was further corroborated through the testimony of PW-3 Rakesh Kumar and thus, it is submitted by the CBI that the motive for commission of the offence stands established in the instant case and that the prosecution had thus, established the essential requirements of a trap case i.e. demand, acceptance, recovery and motive.

49. The CBI further submits placing reliance on the verdict of the Hon'ble Supreme Court in "***B. Noha vs. State of Kerela" SC (2006) 12 SCC 277,*** wherein, it had been observed to the effect:-

> ***"When it is proved that there was voluntary and conscious acceptance of the money, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It has only to be deduced from the facts and circumstances obtained in the particular case.",***

which was further relied upon in ***"Raj Rajendra Singh Seth @ R.R.S. Seth vs The State of Jharkhand &Anr. AIR 2008 SC 3217.***

50. The CBI has further relied on the verdict of the Hon'ble Supreme Court in***"Ram Krishan &Ors. vs. The State of Delhi" AIR 1956 SC 476*** submitting to the effect that it has been held therein to the effect:-

> ***"The word "obtains", on which much stress was laid does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver.***
>
> ***One may accept money that is offered, or solicit payment of a bribe, or extort the bribe by threat or coercion; in each case, he obtains a pecuniary advantage by abusing his position as a public servant."***

51. *Inter alia,* reliance is placed on behalf of the CBI on the verdict of the Hon'ble Supreme Court in ***"M.W. Mohiuddin vs. State of Maharashtra", (1995) 3 SCC 567***, a verdict dated 21.03.1995 submitting to the effect that whilst interpreting Section 13(1)(d) of the Prevention of Corruption Act, 1988, the Hon'ble Supreme Court whilst

relying upon the law laid down in the matter of ***Ram Krishan &Ors. vs. The State of Delhi*** (Supra) held to the effect:-

> ***"Therefore whether there was an acceptance of what is given as a bribe and whether there was an effort on the part of the receiver to obtain the pecuniary advantage by way of acceptance of the bribe depends on the facts and circumstances in each case."***

52. It has thus been submitted on behalf of the CBI that thus, the prosecution is obliged to prove the fact that the accused had accepted the money with it having been submitted on behalf of the CBI further that in the present matter, the acceptance had been duly proved by the complainant PW-3 and the shadow witness PW-4 submitting to the effect that the respondent-CBI is stressing on the aspect not only of recovery but also acceptance of the gratification money.

53. The CBI further submits that the prosecution version is on a sound footing, in as much as, it not only proves acceptance but also other essential requisites of sections of law pertaining to the instant case i.e. of demand and motive. It has been submitted thus, by the respondent/CBI that in the instant case, PW-1 the complainant, and PW-5 the shadow witness have categorically proved the demand and acceptance of money and that PW-4, a chance witness who had no connection with the CBI or the complainant had also supported the version of the PW-1 and PW-5 and had explained as to how on the directions of the appellant herein, B Tiwari, the bribe money was given to accused Pandey. The CBI submits that the recovery had also been established through the testimonies of PW-1, PW-5 & PW-10 and other members of the trap team and that the consistent statements

of material witnesses coupled with the recovery of money clearly establishes that money was accepted by the accused Pandey on the directions of the accused i.e. the appellant herein B. Tiwari as a result of a criminal conspiracy.

54. The CBI has further refuted the contentions raised on behalf of the appellant submitting to the effect that qua the date of correction of the shed number, in view of the proof of demand, acceptance and recovery which the CBI submits has been established beyond any shadow of doubt, the error in the shed number on the document Ex.PW1/B loses its significance and that it has no relevance, with it having been submitted on behalf of the CBI that even if for the sake of arguments, the version of the defence is accepted as gospel truth that the shed number was corrected after the day of trap, it showed that there was an opportunity with the accused of demanding bribe for taking the advantage of discrepancy in the shed number.

55. The CBI further refutes the contention of the appellant that the prosecution had taken an advantage of three years by tutoring the witness PW-5 for the cross-examination when he was produced after a gap of three years and submits that this contention is unfounded without any concrete material.

56. *Inter alia,* the CBI submits that the contention raised on behalf of the appellant that PW-11 S.K. Peshin could not tell the colour of the dress of Pandey is irrelevant, in as much as, the trap was laid in the year 1993 and the question with regard to colour of dress was asked in the year 2000 and after a gap of so many years, these kinds of variations have essentially to be ignored and are bound to happen.

The CBI thus submits that as in the instant case the demand, acceptance, motive and recovery have been clearly proved by the witnesses, in such circumstances the minor contradictions, if any, in the testimonies of the prosecution witnesses are futile and do not affect the veracity of the prosecution.

57. *Inter alia,* the CBI submits that these kinds of variations and contradictions in statements of witnesses are rather bound to happen and that the CBI through the testimonies of its witnesses and the circumstances deposed by them in totality has been able to establish the prosecution version against the appellant beyond a reasonable doubt.

58. The CBI further submits that the Trial Court vide its impugned judgment has taken into account all the facts, circumstances and evidence available on record and has passed a well reasoned judgment which deserves no interference at all and that there is sufficient evidence available on record against the accused/appellant with it having been submitted on behalf of the CBI that the appeal is devoid of all merit and substance and deserves to be dismissed and be dismissed.

ANALYSIS

59. On a consideration of the submissions that have been made on behalf of either side and on a perusal of the impugned judgment and the evidence on record led by the prosecution and the defence, it is apparent as has been observed by the learned Special Judge, THC, Delhi vide the impugned judgment dated 19.05.2001 that there are several variations in the testimonies of the prosecution witnesses in

relation to the trap proceedings itself conducted on 11.06.1993, for though, the learned Special Judge has observed vide paragraph 60 of the impugned judgment to the effect that the testimonies of all the witnesses examined in the case when scrutinized in the light of law as laid down in the verdicts relied upon on behalf of the CBI, made it clear that despite some contradictions and discrepancies admitted in the evidence, they hardly affected the case of the prosecution materially,-observing to the effect that PW-1, the complainant was fully corroborated by the public witness i.e. PW-10 Sh. Jagdish Prashad regarding recovery of the tainted money from the possession of the accused no.2 (R.K. Pandey, since deceased), PW-10 also testified to having arrived at the spot on the signal given by PW-5 Sh. Suraj Prakash and these testimonies were corroborated through the testimony of PW-4 Ved Ram whose presence was not doubted and who was an official of the Department to which accused B. Tiwari belonged.

60. Significantly, vide the impugned judgment, the learned Special Judge has not relied on the testimony of PW-5, the shadow witness Suraj Prakash but has observed to the effect that the evidence of other witnesses established the prosecution version in relation to material particulars of the prosecution case which established beyond any doubt that recovery of tainted money was affected from the possession of R.K. Pandey (since deceased). Vide the impugned judgment, the appellant herein and the co-accused R.K. Pandey (the appellant of CRL.A. No.388/2001, since deceased) were also held to have been in conspiracy of commission of an offence punishable under Sections

120B of the Indian Penal Code, 1860 r/w Section 7, 13(2), 13(1)(d) of the Prevention of Corruption Act, 1988 by way of recovery of tainted money from R.K. Pandey (since deceased), i.e. the accused no.2 which he was stated to have accepted on the direction of the appellant herein.

61. The factum that Ex.PW1/B which is the letter dated 29.09.1992 issued to the complainant- Satish Kumar (PW-1) has on it the work space mentioned as No.90 when in fact, the work space allotted to the complainant was shed no.40 at Khichripur as per the prosecution version itself, on the date 11.06.1993, the date of the said trap as per the prosecution version, with the said document Ex.PW1/B thus bearing the work space number as being 90 Khichripur **and not the allotted space no.40 Khichripur as allotted to the complainant** cannot be overlooked.

62. The testimony of Mr. R.K.Dotania, Deputy Manager at DSIDC, Khichripur, Delhi examined as PW-6 affirms that the date beneath his initials on portion marked ‘C’ on Ex.PW1/B is 19.06.1993 and that the date is also mentioned as 19.06.1993 at point B on this letter Ex.PW1/B, though, PW-6 has denied signatures at point ‘B’ to be his signatures.

63. PW-6, M. R.K. Dotania, Deputy Manager at DSIDC, Khichripur, Delhi has further stated **that the “figure of 40 written above encircled portion A also appears to be in my hand writing”** and significantly goes on to state that “**initials at point marked B just opposite figure of 90 are not mine.**” The said document Ex.PW1/B as placed on the Trial Court Record is as under:-

M.16.I (IV)
93

D-9

DELHI STATE INDUSTRIAL DEVELOPMENT CORPORATION LIMITED
TECHNICAL CENTRE BUILDING, WAZIR PUR, INDUSTRIAL AREA
DELHI-110052

COMMUNITY WORKS CENTRES DIVISION

NO. DSIDC/CWC/ Dated: 29/9/92

To,

Shri/Smt. Satish Kumar
5/248 Khirpur
Delhi-110091

Subject: Handing over possession of work space No. 90 measuring plinth area 13.67 sq.mt. in the work Centre at Khirpur.

Dear Sir/Madam,

The above work space was provisionally allotted to you by the Commissioner of Industries, Delhi Administration on hire-purchase basis and subsequently the scheme was transferred to DSIDC. On your paying 25% Hire-purchase cost and 2% maintenance charges per annum as initial deposit and on your signing the hire-purchase agreement with DSIDC, it is intended to hand over possession of the said work space to you.

2. You are requested to collect your Indentity Card from this office on any working day and then contact Shri A.K. Mishra Jr. Engineer (Civil) at the site for taking over possession on 21.9.92 at 11 AM.

DEPUTY MANAGER (CWC)

Copy to: Shri B. Tewari AM (Hort.) Jr. Engineer for necessary action please. He is requested to prepare the handing over notes in quadruplicate and send one copy to the undersigned for record.

855/937

64. Mr. R.K. Dotania, Deputy Manager at DSIDC, Khichripur, Delhi stated that the no. 40 above work space no.90 appeared to be in his hand writing but also stated that the initials at point **B** where a correction was made were not his, coupled with the factum that the document Ex.PW1/B at point C shows the issuance of the copy of Ex.PW1/B to B. Tiwari, Assistant Manager at DSIDC, Khichripur, Delhi i.e. the appellant herein for necessary action on the date 19.06.1993 which date and initials thereon at mark C on Ex.PW1/B are admitted to be his by PW-6,Mr. R.K. Dotania itself as rightly contended on behalf of the appellant itself destroys the very foundation of the prosecution case qua the alleged demand made by the appellant for a bribe of Rs.2,000/- to hand over the possession letter in relation to a work space no.40 to the complainant when the document dated 29.09.1992 which itself is shown to be a duplicate, had its correction made qua the work space number as being 40 only on 15.06.1993 as deposed by PW-6 Mr. R.K. Dotania, Deputy Manager at DSIDC, Khichripur, Delhi.

65. The document Ex.PW1/B-1 was testified by Mr. R.K. Dotania, Deputy Manager at DSIDC, Khichripur, Delhi as being the duplicate copy of Ex.PW1/B which too he stated was under his signatures. This document also has a number 40 written above the encircled 90 qua the work space with the date of correction shown as being 19.06.1993 with there being an interpolation on the date 19.05.1993 to 19.06.1993 and Ex.PW1/B shows an interpolation of the date 15.06.1993 to 19.06.1993 at point A qua the work space and shows an interpolation of the date 19.05.1993 to 19.06.1993 at portion at mark C which mark

C is beneath the stated endorsement of the duplicate letter dated 29.09.1992 marked to Mr. B. Tiwari, Assistant Manager at DSIDC, Khichripur, Delhi for action.

66. The witness PW-1, the complainant in his cross-examination conducted on behalf of the appellant also testified on 31.07.1995 that the correction in the possession letter had been made by Sh. Kumar on 15.06.1993 in his presence.

67. In these, circumstances, the response of the appellant herein Mr. B. Tiwari to question No.74 & 75 in his statement under Section 313 of the Cr.P.C., 1973,- cannot be overlooked. The question nos. 74 & 75 and the responses thereto of the statement under Section 313 of the Cr.P.C., 1973 of the appellant herein are as under:-

> ***"Q.74 Why this case against you?***
> ***Ans. It is a false case, which fact is evident from the documents filed by the prosecution itself.***
> ***Q.75 Have you anything else to say?***
> ***Ans. The case has been foisted upon me and I refused to hand over the possession without proper instruction and valid documents."***

68. The Hon'ble Supreme Court vide its verdict in ***Asraf Ali Vs State of Assam (2008) 16 SCC 328*** has observed to the effect that it is well settled that the provision of Section 313, Cr.P.C., 1973 is mainly intended to benefit the accused and as its corollary to benefit the Court in reaching the final conclusion.

69. The verdict of the Hon'ble Supreme Court in ***M.Abbas Vs State of Kerala (2001) 10 SCC 103*** also observed vide observations therein

that where an accused sets up a defence or offers an explanation, it is well settled that he is not required to prove his defence beyond a reasonable doubt but only by preponderance of probabilities. In the said case in ***M.Abbas*** (Supra) under the then Prevention of Corruption Act, 1947 wherein there were allegations of alleged recovery of three currency notes of the denomination of Rs.50 each from the shirt pocket of the appellant which were the currency notes which were presented by a contractor to the municipality where the appellant in his statement recorded under Section 313 of the Cr.P.C. admitted that the seized currency notes had been received by him and had also been recovered from his possession, it had been observed to the effect that the explanation of the appellant which was that the amount of Rs.150 had not been received by him as bribe but for the purpose of giving the same to another contractor named Kamalasanan who had completed the work of removing the bump from the road, which otherwise was required to be removed by the contractor, PW2 with the prosecution itself having come up with the case that the bump was removed by Kamalasanan and that without removal of the bump, refund of earnest money and security deposit could not have been made with there being nothing on record to show that the municipality paid Kamalasanan any amount for removal of the bump and that he would not have done the work for free it was observed by the Hon'ble Supreme Court that this probabilises the version of the appellant that the amount of Rs.150 given to him was in fact the balance of Rs.200 agreed to be given to Kamalasanan for removal of the bump.

70. Similarly, in the instant case, **the contention of the appellant thus that he had refused to hand over the possession without proper instructions and valid documents in the instant case cannot thus be held to be improbable**. Significantly, the appellant does not deny the factum of the CBI officials having come to his office and having told him after disclosing their identities that he along with other co-accused had demanded and accepted Rs.2,000/- from the complainant and rather responded to question no.60 which was to the effect:-

> ***"Q.60 It is further in evidence tap against you that trap laying officer, Mr. Peshin disclosed his identity and challenged both of you as to having demanded and accepted Ps.2000/- from the complainant, What have you to say?***
> ***Ans. It is correct, some CBI officials told me I had demanded and accepted bribe from Satish and then I refused they threw me down from my chair and searched, my person and gave me first blows.",***

admitting that some CBI officials told him that he had demanded and accepted a bribe from the complainant but the appellant also went on to state that when he refused, they threw him down from his chair and searched his person and gave him fist blows. **Apparently, nothing prevented the appellant from not admitting the presence of the CBI officials at his office at Himmatpuri and of the laying of a trap and the factum that the appellant affirms the presence of the trap laying office and of the CBI and its team and of the allegations put to him of the alleged demand rather supports the contention of the appellant that he had put forth to the**

complainant that possession of the shed no.40 could not be given without correction of the documents in relation to the allotment of the shed made to Satish Kumar, the complainant.

71. It has been considered essential by this Court to re-appreciate the entire evidence on record it being the First Appellate Court and it being the sacrosanct duty of the Appellate Court as laid down by the Hon'ble Supreme Court in ***Kamlesh Prabhudas Tanna v. State of Gujarat*, (2013) 15 SCC 263** with observations in paragraph 13 thereof, which reads to the effect:-

> ***"13. Tested on the touchstone of the aforesaid principles we find that there is total lack of deliberation and proper ratiocination. There has been really no assessment of evidence on record. The credibility of the witnesses has not appositely been adjudged. The affirmative satisfaction recorded by the High Court is far from being satisfactory. We are pained to say so, as we find that the learned trial Judge has written an extremely confused judgment replete with repetitions and in such a situation it becomes absolutely obligatory on the part of the High Court to be more careful to come to a definite conclusion about the guilt of the accused persons, for their liberty is jeopardised. It may be stated at the cost of repetition that it is the sacrosanct duty of the appellate court, while sitting in appeal against the judgment of the trial Judge, to be satisfied that the guilt of the accused has been established beyond all reasonable doubt after proper reassessment, reappreciation and re-scrutiny of the material on record.",***

observing thus to the effect that whilst sitting an appeal against the judgment of the trial Judge, the Appellate Court has to be satisfied that the guilt of the accused has been established beyond all reasonable doubts after proper re-assessment- re-appreciation and re-scrutiny of the material on record and that as observed in paragraph 14 of the said verdict, which reads to the effect:-

> ***"14.*** *It can be stated with certitude that appreciation of evidence and proper reassessment to arrive at the conclusion is imperative in a criminal appeal. That is the quality of exercise which is expected of the appellate court to be undertaken and when that is not done, the cause of justice is not subserved, for neither an innocent person should be sent to prison without his fault nor a guilty person should be let off despite evidence on record to assure his guilt. Ergo, the emphasis is on the duty of the appellate court."*

72. Thus, as laid down by the Hon'ble Supreme Court in **Kamlesh Prabhudas Tanna** (supra) **The appreciation of evidence and proper re-assessment to arrive at a conclusion of guilt or otherwise of an accused is imperative in a criminal appeal and that is the quality of exercise which is expected of the Appellate Court to be undertaken and when that is not done, the cause of justice is not subserved for neither an innocent person should be sent to prison without his fault nor should a guilty person be let of despite evidence on record to assure his guilt.**

73. Furthermore, it is essential to observe that PW-1, the complainant in his deposition on oath had stated that he received the possession letter regarding the shed in January 1993 which letter was stated to have been dispatched on 29.09.1992 and stated that on receipt of this letter he had gone to the Wazirpur office of the DSIDC,

Wazirpur where he met Mr. R.K. Dotania, Deputy Manager at DSIDC, Khichripur, Delhi (PW-6) who directed him to see Mr. Mishra and that Mr. Mishra used to sit in the Khichripur Office of DSIDC, though, he PW-1 did not know his designation and that in about February 1993, he met Mr.Mishra at Khichripur office who after seeing his possession letter directed him to see one Mr. Kumar in Jhilmil Colony and since the shed number was not clear, he thereafter met Mr. Kumar in his office at Jhilmil Colony after about 10-15 days as the mother of the complainant was not feeling well and then Mr. Kumar corrected the shed number from 90 to 40 and directed the complainant to see Mr. B. Tiwari, Assistant Manager at DSIDC, **Khichripur**, Delhi as a consequence of which on 08.06.1993, he met Mr. B. Tiwari i.e. the appellant herein, and he that the complainant had taken along with him the possession letter and his identity card which was in respect of the shed which was being allotted to him and that after showing the possession letter and identity card to the appellant, the complainant asked about the possession of the shed to which the appellant replied that he, the complainant would have to pay a sum of Rs.2,000/- and only then he would get the possession of the shed and that Mr. B. Tiwari i.e. the appellant herein also told the complainant that he should make the arrangement at the earliest since already a long time had elapsed on the date of the issuance of the possession letter and thus, he the appellant would get the allotment cancelled, whereafter, the complainant showed his inability to pay the said amount but the appellant herein Mr. B.Tiwari pressurized him i.e. the complainant and that the complainant told Mr. B. Tiwari that he would make the payment of the amount on 11.06.1993 at the site office at Khichripur.

74. Mr. Satish Kumar (PW-1) i.e. the complainant *inter alia* had deposed on 20.02.1995 to the effect that the possession letter Ex.PW1/B was received by him in an envelope which was exhibited as Ex.PW-1/C and that bore his signatures at mark A. Significantly, this envelope i.e. Ex.PW1/C shows the date of delivery thereof as being 15.01.1993 as well as date 05.01.1993 and 06.01.1993 and shows the signatures at point A of the complainant on that envelope which he has stated are his with the date **16.06.1993**; that the document **Ex.PW1/C** which is the envelope in which the letter Ex.PW1/B was received by the complainant bears on it a date of **16.06.1993** beneath the signatures of the complainant which signatures were identified by the complainant, the contention of the trap laid in relation to an alleged demand made by the appellant herein on the date **11.06.1993** is not at all borne out.

75. Furthermore, that the complainant did not bother to mention in his complaint Ex.PW1/R made to the Superintendent of Police, CBI, Anti-Corruption Branch, New Delhi on 10.06.1993, that the complainant herein had been threatened by the appellant herein with cancellation of the shed in question, if the bribe was not paid qua which the complainant stated in his cross examination that he could not remember whether he so stated during investigation,- cannot be overlooked.

76. Though, the proceedings qua the co-accused R.K. Pandey (since deceased) have abated, the factum that Mr. Pandey also stated

that he had not received any bribe money on the directions of the appellant and was in fact not wearing the shirt Ex.P3 in view of the factum that he had a security uniform as he worked as a Security Guard with PW-10, becomes significant in view of the factum that as per the testimony of the complainant, he had initially placed the G.C. notes tainted with phenolphthalein powder in his own left right upper pocket of his shirt (apparently just in the same manner as with the prosecution version by Mr. R.K. Pandey, the co-accused), and the complainant in his cross examination dated 18.09.1995 stated that this money remained in his left front shirt pocket when he travelled by bus from Khichripur to Himmatpuri.

77. In these circumstances, the factum that the shirt of the complainant in which G.C. notes had been kept was not seized as an exhibit, the non-seizure thereof by the prosecution is fatal to the instant case. Thus, in the instant case, where there two versions are probable, the benefit of doubt has essentially to be granted to the accused, especially where in the instant case there was no bribe money recovered from the appellant and taking into account the factum that the shirt of the complainant in which the G.C. notes tainted with phenolphthalein powder had been kept was not seized with the contention of the appellant that he gave no directions to Mr. R.K. Pandey, the co-accused (since deceased) with the statement of Mr. R.K. Pandey also that he did not demand any bribe from the complainant, the stated alleged conspiracy between the appellant Mr. B. Tiwari and the co-accused Mr. R. K. Pandey (the appellant of CRL.A. 388/2001, since deceased) for the commission of the alleged

offences punishable under Sections 7, 13(2), 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 120B IPC,- cannot be held to have been made out against the appellant. Furthermore the alleged commission of the offences punishable under Section 17, 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 is not made out against the appellant in view of the infirm and discrepant evidence led by the prosecution.

CONCLUSION

78. The appeal is thus, allowed and the impugned judgment and order on sentence against the appellant dated 19.05.2001 is set aside and the appellant is acquitted in relation to the alleged commission of the offences punishable under Section 7, 13(2), 13(1) (d) of the Prevention of Corruption Act 1988 read with Section 120B of the IPC, 1860 in RC No.40(A)/93-DLI. The fine of Rs.9,000/- recovered from the appellant is directed to be returned to him by the Special Judge, Tis Hazari Courts.

ANU MALHOTRA, J.

JULY 20th, 2022