2023:PHHC:164954

344 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRA-S-2530-SB-2007

Reserved on : 04.12.2023
Pronounced on :21.12.2023

Madan Lal ...... Appellant

Versus

Central Bureau of Investigation ...... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. D.S.Malik, Advocate with
Mr. Ved Priya Malik, Advocate
for the appellant.

Ms. Shubhra Singh, Advocate
for CBI.

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Manjari Nehru Kaul, J.

The appellant is impugning the judgment of conviction and order of sentence dated 30.11.2007 passed by learned Special Judge, Ambala vide which he was convicted and sentenced in case No. 06 of 2003 titled as CBI vs. Madan Lal as under:

Name of Convict	Offence	Period of sentence	Fine imposed	Period of sentence in default of payment of fine
Madan Lal	7 of Prevention of Corruption Act	Rigorous imprisonment (RI) for one year	Rs.2000/-	01 month

Name of Convict	Offence	Period of sentence	Fine imposed	Period of sentence in default of payment of fine
	13(1)(d) r/w 13(2) of Prevention of Corruption Act	RI for one year	Rs.3000/-	01 month

All the sentences were ordered to run concurrently.

2. **Case of the prosecution:**

(i) The appellant (hereinafter referred to as 'accused') in his capacity as Commissioner of Income Tax, Karnal Range, Karnal (Hry.) in the year 2002, being a public servant, demanded Rs.1 lakh as illegal gratification from the complainant Rajesh Bahl (hereinafter referred to as 'complainant'); this demand was made for bestowing a favourable order concerning the income tax assessment of M/s Mortein Finlease Pvt. Ltd (hereinafter referred to as 'firm'), which was being represented by the complainant as its consultant. Following the complainant's refusal to pay the illegal gratification demanded by the accused, a formal complaint dated 09.05.2002 was lodged by him with the DIG/CBI/Anti Corruption, New Delhi.

(ii) Upon receipt of the complaint, a trap team was constituted comprising of Sh. K.Babu and Sh. Bhagat Ram, Inspector, Sh. Arun Rawat, Sub Inspector, Sh. G.Verma, DSP, CBI and two independent witnesses namely Sh. Joginder Pal Singh, LDC and Sh. M.K.Sinha, Assistant Secretary, both from Inland Waterways Authority of India (IWAI), Noida, UP. After the authenticity of the complaint made by the complainant had been verified, currency notes amounting to Rs.1 lakh, provided by the complainant were recorded in the "handing over memo". These currency notes (hereinafter referred to as tainted notes) were thereafter treated with phenolphthalein powder for identification purposes. Sh. M.K.Sinha, as an independent witness, was instructed to handle the tainted notes, demonstrating the reaction between the phenolphthalein powder and the sodium carbonate to all those constituting the trap team. Following this demonstration, the resulting pink colour solution was sealed in a separate bottle "Ex.A". Subsequently, all members of the trap team underwent hand wash to remove any residual of phenolphthalein powder. It was also ensured that no incriminating documents or items were retained by any member of the trap team, including the complainant and independent witnesses, following a comprehensive search. The tainted notes of Rs.1 lakh were concealed by the complainant beneath his clothing, and an additional amount of Rs.1,000/- was kept by Sh.G.Verma, DSP, CBI as contingency expenditure during their journey to Karnal. The complainant was permitted to retain his mobile phone, upon request. Under the directions of Sh. G.Verma, DSP, CBI, the complainant was specifically instructed to hand over the bribe amount to the accused upon the latter's explicit demand. Sh. Joginder Pal Singh was directed to act as a shadow witness to the complainant, posing as Sh. Anil Bathla, one of the Directors of the firm. Meanwhile, Sh.M.K.Sinha was directed to remain in close proximity to the complainant during the transaction and keep an eye over the same. Both the complainant and the shadow witness were instructed to signal the trap team by rubbing their faces with both hands after the completion of the bribe transaction.

(iii) Upon completion of pre-trap formalities, which were meticulously recorded in a "handing over memo" dated 09.05.2002 (Ex.PW-1/2), the trap party along with the complainant and independent witnesses proceeded to the residence of the accused at # 482, Model Town, Karnal, Haryana, at 6.15 pm from Delhi. Enroute to Karnal at about 8.00 pm, the complainant received a call on his mobile phone No.9812062211, displaying number '291476', which was noticed by Sh. G.Verma, DSP, CBI and the shadow witness-Joginder Pal Singh. The complainant identified the caller as Sh.S.C.Chawla, Income Tax Officer, Karnal (hereinafter referred to as "ITO"). The ITO enquired from the complainant about his whereabouts; he was informed by the complainant on phone that the accused had been awaiting his arrival since 6.30 pm and also questioned the reason for the delay. The complainant explained his delay to the ITO and told him that he would be arriving at the residence of the accused between 9.00-9.30 pm.

(iv) Upon reaching the residence of the accused around 9.15 pm, the complainant accompanied by the shadow witness- Sh. Joginder Pal Singh entered his residence, while the other members of the trap team discreetly positioned themselves around the residence of the accused. Inside the drawing room of the accused, he demanded and accepted a bribe of Rs.1 lakh from the complainant, and further asked him to place the bribe money under the sofa cushion. After about 15 minutes, the shadow witness on coming out of the house of the accused, gave the pre-decided signal by rubbing his face with both of his hands, prompting all the members of the trap team to rush to the spot. After revealing his identity, Sh. G.Verma, DSP, CBI confronted the accused, and enquired about his acceptance of the bribe money of Rs.1 lakh from the complainant. The accused, visibly nervous, admitted to accepting the bribe. The shadow witness-Joginder Pal Singh also corroborated the demand and acceptance of the bribe to Sh. G.Verma, DSP, CBI for getting his assessment proceedings expedited. Upon further questioning, accused reluctantly admitted to directing the complainant to place the bribe money under the sofa cushion. Sh. G.Verma, DSP, CBI then instructed the accused to produce Rs.1 lakh leading to its recovery from beneath the sofa cushion. The tainted notes were handed over to Sh. M.K.Sinha for cross verification with the previously recorded list in the "handing over memo" wherein the denominations and numbers of the tainted notes had been detailed; the denominations and numbers of the tainted notes recovered from beneath the sofa cushion tallied with the list annexed with the "handing over memo".

(v) Subsequently, the colourless solution of sodium carbonate was prepared in a neat and clean glass tumbler. The accused was directed to dip his right hand fingers into the solution, which upon contact, turned pink in colour. This resultant solution was preserved in a labelled glass bottle as 'right hand wash' and securely sealed and seized vide memo 'Ex.B'. Additionally, the cloth cover of the cushion, where the tainted currency notes had been placed, was also removed and dipped/submerged in the sodium carbonate solution, resulting in the colour changing to pink. This solution was transferred into another glass bottle marked as "Ex.C" which was also duly sealed and seized with the CBI seal. All these post-trap proceedings were recorded in the recovery memo Ex.PW-1/2 dated 09.05.2002.

(vi) Furthermore, during investigation, it came to be revealed that the Income Tax Returns of the firm had been filed on 30.11.2000 for the financial year 1999-2000 with the Income Tax Officer, Ward-I, Karnal, however, due to change in the jurisdiction, the matter had been transferred to the Income Tax Officer, Ward-II, Karnal. On 29.11.2001, a notice under Section 143(2) of the Income Tax Act (hereinafter referred to as 'the

Act') was issued by the ITO, Ward-II to M/s Mortein Finlease Pvt. Ltd., intimating them of their assessment case being selected for scrutiny by the Income Tax Department, for the year 2000-2001. Subsequently, a notice under Section 142(1) of the Act dated 12.12.2001 accompanied by a questionnaire was also issued by the ITO soliciting a response from the firm. The complainant and the Directors of the firm visited the office of the ITO on numerous occasions (at least 10 times) for queries/clarifications. The accused, who had approved the assessment case of the firm for scrutiny among the 12 cases presented to him, instructed the ITO to forward the files of the firm to him, thereby impeding the passing of the final order by the ITO.

(vii) During investigation, it was also revealed that the income tax assessment of the firm had been pending before the ITO, Karnal since 30.11.2000. The accused, abusing his official position as Commissioner, Income Tax, Karnal had directed the ITO to forward the assessment file of the firm to him. In addition, the accused also asked the ITO to ask the complainant and the Directors of the firm to come and meet him in person in his office, despite the fact that he had no jurisdiction over the assessment of the income tax matters of the said firm; this act and conduct of the accused was in contravention of the guidelines outlined in the CBDT Circular No.5/2000 dated 20.09.2001, which vested sole authority with the dealing ITO to pass final orders concerning assessment matters of any firm.

(viii) Furthermore, in his statement recorded under Section 164 Cr.PC, before the learned JMIC, Karnal, on 24.06.2002, the ITO stated that on 09.05.2002, he had received a phone call from the accused at his residential landline phone No.291476; the accused had enquired from him about the whereabouts of the complainant as he had been waiting for him at his residence since 6.30 pm; the ITO further stated that he then contacted the complainant on his mobile phone No.9812062211, enquiring about the reason for the delay in reaching the residence of the accused. The complainant conveyed that on account of his engagement somewhere else, they had been delayed and would be reaching at the residence of the accused between 9.00-9.30 pm.

3. The accused was arrested, and charge sheet under Section 173 Cr.PC presented against him in the Court, followed by framing of charges under Section 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988, (hereinafter referred to as 'P.C. Act') to which he pleaded not guilty and claimed trial.

4. The prosecution in support of its case examined the following 10 witnesses: PW-1 Sh. Rajesh Bahl (complainant), PW-2 Sh.S.C. Chawla, ITO, PW-3 Sh. Amarbir Singh (Director of the Firm), PW-4 Sh. M.K.Sinha (independent witness), PW-5 Sh. Joginder Pal Singh (shadow witness), PW-6 Sh. Ganesh Verma, SCP, CBI (investigating officer) PW-7

Sh. C.L.Bansal, Sr. Scientific Officer (retd.) CFSL, CBI, New Delhi, PW-8 Sh. V.K.Sharma, Under Secretary, PW-9 I.J.Saldi and PW-10 Sh. Sandeep Kumar Sharma, Inspector, CBI. All the prosecution witnesses except PW-5 Sh. Joginder Pal Singh, shadow witness, supported the case of the prosecution; PW-5 Sh. Joginder Pal Singh was declared hostile during trial.

5. Learned Special Judge, Ambala on the basis of the evidence led and other material on record held the accused guilty and convicted him and sentenced as already detailed in the earlier part of this judgment.

6. **Contentions of learned counsel for the accused-appellant**

Learned counsel for the appellant-accused has contested the impugned judgment on the following grounds:

(i) that the learned Special Court turned a blind eye to the material and stark contradictions appearing in the case of the prosecution.

(ii) that the Ld. Special Court failed to appreciate that the burden of proving a case rests upon the prosecution and not the accused; the prosecution had been unsuccessful in proving the offence under Section 7 of the P.C.Act against the accused as the necessary ingredients of Section 7 of the P.C. Act i.e. specific demand of illegal gratification and its subsequent acceptance were notably absent in the instant case.

(iii) that there existed no occasion for the accused to have raised a demand of illegal gratification from the complainant since he had no role to play in the assessment of the income tax returns of the firm. It was the ITO (PW-2), who had been overseeing the assessment of the firm and had also issued a notice under Section 143(2) of the Act to the firm. Once the accused had given his formal acceptance for scrutiny of the case, his further concern with the matter had ceased and he had been rendered as *functus officio*. Moreover, even as per the admitted case of the prosecution itself the accused had no jurisdiction in the assessment matters, and many meetings prior to 09.05.2002 had already taken place between the complainant-firm and the ITO.

(iv) that it was also a matter of record that all the proceedings pertaining to the assessment of the complainant-firm had already been closed on 06.05.2002, which was prior in time to 09.05.2002, when the trap team reached the house of the accused and allegedly caught him demanding and accepting bribe.

(v) that the Income Tax Department had time till 31.03.2003 to complete the assessment proceedings, and in case no order was being passed or the assessment had not been completed, even for the sake of arguments, at the behest of the accused, the scrutiny proceedings would have automatically lapsed as per the provisions of the Act. Therefore, even if the case of the prosecution was accepted, the accused could not have delayed the assessment of the Firm, beyond the prescribed period. It was the ITO alone, who was the competent authority to submit the assessment report before the expiry of the deadline.

(vi) that the following material and stark contradictions appeared in the testimonies of the prosecution witnesses, which as per learned counsel go a long way to create a serious dent in the truthfulness of the prosecution version:

(a) While stepping into the witness box as PW-1, the complainant categorically denied having pointed out to the investigating officer as to the place where the tainted notes were lying, which was in stark contradiction to the deposition of PW-4 Sh. M.K. Sinha, who stated to the contrary and deposed that it was the complainant, who had pointed out to the investigating officer as to where the tainted notes were lying. Not only this, PW-4 Sh. M.K.Sinha during his cross-examination conceded that during the proceedings before the Central Vigilance Commission (hereinafter referred to as 'CVC'), he had stated that when the investigating officer on entering the drawing room had asked the accused as to whether he had demanded and accepted bribe, the accused had explicitly denied the same. Similarly, PW-5 Sh. Joginder Pal Singh (shadow witness), who was declared hostile during trial, also categorically deposed that it was the complainant, who had pointed out the place where the tainted notes were lying. PW-6 Sh. Ganesh Verma, SCP, CBI, (investigating officer) however, came up with an altogether different version that it was the shadow witness PW-5 Sh. Joginder Pal Singh, who had pointed out to him the place where the tainted notes were lying.

In the circumstances, it could not be said that the factum of acceptance of bribe by the accused had been proved by the prosecution.

(vii) As far as the recovery of tainted notes and hand wash of the accused is concerned, as per the case of the prosecution itself, it was at the behest of the Investigating Officer, PW-6 Sh. Ganesh Verma, that the accused had lifted the sofa cushion where the tainted notes had been placed by the complainant; hence, in the above background the accused came in contact with both the sofa cushion and the tainted notes, and thus, it was but natural for the hand wash of the accused to have turned pink. Furthermore, even as per deposition of the Investigating Officer PW-6 Sh. Ganesh Verma, when the trap team entered the house/drawing room of the accused, the complainant was himself sitting on the sofa under which the tainted notes were lying. All these circumstances needed to be appreciated in the light of the deposition of the shadow witness PW-5 Sh. Joginder Pal Singh, who categorically stated that it was the complainant, who had himself kept the tainted notes under the sofa cushion while they both were all by themselves, waiting for the accused in the drawing room, who as informed, was taking his dinner at that time. Moreover, the accused, who as per the admitted case of the prosecution entered the drawing room after about 15 minutes of the arrival of the complainant and the shadow witness, could not have possibly known about the tainted notes lying under the sofa cushion; it was only when the investigating officer PW6- Sh. Ganesh Verma insisted upon the accused to lift the sofa cushion, that the tainted notes were found underneath it. Thus, it was but natural for the solution to turn pink once his hand came in contact with the cushion.

(viii) The complainant, being an experienced Chartered Accountant, knew that simply dealing with and managing the ITO would not suffice. The complainant and the firm were also well aware of the stringent provisions outlined in Section 263 of the Act wherein the Commissioner of

Income Tax had the power to cancel any assessment order, detrimental to the interest of the revenue. Consequently, they harboured concerns and apprehensions that, given the approval of scrutiny of their firm by the accused himself, their case might be reopened, which would inevitably lead to adverse consequences for them in the long term.

(ix) In the above facts and circumstances, there was an apparent absence of *actus reus,* which was erroneously overlooked by the learned Special Court while passing the impugned judgment.

7. **<u>Contentions of learned counsel for the respondent-CBI</u>**

Learned counsel for the respondent - CBI while opposing the prayer and submissions made by the counsel opposite has submitted that no doubt, the shadow witness PW-5 Sh. Joginder Pal Singh, had been declared hostile during trial, however, he had supported the case of the prosecution with regard to the pre-trap proceedings thereby corroborating certain key aspects of the prosecution version.

Learned counsel for the respondent has further made the following submissions:

(i) that the accused had demanded and accepted illegal gratification of Rs.1 lakh from the complainant, and it was he himself, who had instructed the complainant to place the tainted notes beneath the sofa cushion in his drawing room, which in turn were subsequently recovered by the investigating officer in the presence of other members of the trap team, including the accused himself.

(ii) that significantly when the accused was subjected to a hand wash the colour of the solution turned pink, which corroborated the case of the prosecution that the accused had himself facilitated, the recovery of the tainted notes.

(iii) that all the witnesses, who were part of the trap team and who had been discreetly positioned outside the residence of the accused, while stepping into the witness box supported the case of the prosecution, except of course, PW-5 Sh. Joginder Pal Singh, shadow witness, who was declared hostile during trial.

(iv) that the very factum of the accused permitting the complainant to enter his residence on the evening of 09.05.2002 lent credence to the prosecution case regarding the factum of demand and acceptance of bribe by the accused.

(v) that no doubt, after the case of the complainant firm had been selected for scrutiny by the Income Tax Department, the accused had become *functus* *officio*, however, the matter was still pending before the ITO – PW-2, and the accused being his senior officer was still in a position to influence him, being his subordinate;

(vi) that even though the assessment of the complainant firm had been finalised on 06.05.2002, however, the Income Tax Department still had time till 31.03.2002 to pass an order on the scrutiny proceedings and thus, there was a lingering uncertainty over the complainant firm's status, re-enforcing the potential leverage the accused had.

(vi) That no doubt, there were some discrepancies in the testimonies of the prosecution witnesses, however, these discrepancies were not so material, which would in any manner, undermine the core of the prosecution case.

8. Heard learned counsel for the parties and perused the relevant material available on record.

9. Before proceeding further, it would be apposite to reproduce Section 7 and Section 13(1)(d) of Prevention of Corruption Act, 1988, which are as under:

> *"**Section 7** Public servant taking gratification other than legal remuneration in respect of an official act.—Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a*

motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

(Explanations) -

(a) "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration". The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section."

13. **Criminal misconduct by a public servant**.—

(1) A public servant is said to commit the offence of criminal misconduct,—

(a) xxxx xxxx xxxx

(b) xxxx xxxx xxxx

(c) xxxx xxxx xxxx

(d) if he, -

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;"

10. Thus, what can be culled from a reading of the above reproduced provisions of law is that in a case revolving around alleged corruption, the law stipulates stringent burden on the prosecution under Section 7 of P.C Act. This necessitates unequivocal proof of both the demand for and subsequent acceptance of illegal gratification. Additionally, Section 13 of P.C. Act emphasizes upon the active solicitation by the

accused, placing significant stress on ingredients such as intent and the voluntary acceptance of gratification as a bribe. The requirement of law is to establish beyond reasonable doubt that the accused willingly and knowingly accepted the bribe, a legal principle succinctly articulated in various judicial pronouncements of the Supreme Court of India.

11. Adverting to the instant case, it presents several material discrepancies, which would be pivotal in assessing the legitimacy of the allegations levelled against the accused. The crux of the instant case lies within the conflicting testimony provided by the two key witnesses, namely PW-1 Sh. Rajesh Bahl (complainant) and PW-5 Sh. Joginder Pal Singh, (shadow witness), who were present in the drawing room of the accused at the relevant time on the fateful day, i.e. 9th May 2002. As per the deposition of the complainant, the accused directed him to place Rs.1 lakh beneath the sofa cushion and on being inquired by PW-6 Sh. G.Verma, it was the accused, who had indicated that the notes were lying under the sofa cushion. Conversely, the shadow witness, PW-5 Sh. Joginder Pal Singh presented an entirely divergent sequence of events inasmuch as he deposed that it was the complainant himself, who had concealed the tainted notes while he along with the complainant were waiting for the accused in his drawing room. The veracity of these contradictory accounts cast a cloud of doubt, particularly, regarding the reliability of the version, put forth by the complainant, who naturally is an interested party. Thus, the essence of these conflicting versions necessitates a thorough examination of the testimony of PW-4 Sh. M.K. Sinha, an independent witness. PW-4 Sh. M. K. Sinha during his examination-in-chief asserted that it was the complainant,

who had disclosed about the location of the tainted money to PW-6 Sh. G. Verma, the Investigating Officer, when the latter entered the drawing room of the accused. Further, when PW-6 Sh. G.Verma, Investigating Officer, asked the accused as to where he had kept the bribe money, the latter kept mum. However, during his cross-examination, PW-4 Sh. M.K.Sinha improved upon his earlier statement, and voluntarily stated that it was at the instance of the accused, the tainted notes were recovered from beneath the sofa cushion. At the same time, this witness also admitted that during the proceedings before the CVC, he had stated to the contrary that when PW-6 Sh. G.Verma, the Investigating Officer, entered the drawing room of the accused, and questioned the latter, as to whether he had demanded and accepted any bribe from the complainant, the accused explicitly denied the same.

12. Similarly, deposition of Sh. G.Verma, PW-6, Investigating Officer, does, though, initially appear to corroborate the prosecution version, however, on a careful perusal of his cross-examination, many glaring discrepancies come to the fore, for example, initially, he had attributed the revelation of the location of the tainted notes to the shadow witness, PW-5 Sh. Joginder Pal Singh; however, later, he deposed that it was the accused himself, who had indicated the place where the tainted notes had been placed, and had also lifted the sofa cushion himself; moreover, the inability of this witness to recall whether the complainant had also indicated the location of the tainted notes added further uncertainty to the prosecution narrative. The varying accounts by this witness regarding the revelation of the tainted notes, location, attributing it to different individuals at different

times, does significantly diminish the credibility of his testimony. Still further, the blatant discrepancies among the other prosecution witnesses as to what actually transpired, after they all entered the drawing room of the accused, after getting the pre-arranged signal, from the shadow witness PW-5 Sh. Joginder Pal Singh, has further compounded the inconsistencies. Although not declared hostile during trial, the varied versions of events by the prosecution witnesses evidently failed to align with each other. Interestingly, some of the prosecution witnesses, even corroborated certain aspects of the testimony of the shadow witness, who as already observed earlier, was declared hostile by the prosecution, further complicating the inconsistencies and muddying the waters of credibility.

13. In criminal jurisprudence, the conviction of an accused cannot solely rest on inference to establish the guilt of an accused beyond reasonable doubt. Direct evidence or circumstantial evidence as the case may be, linking each event conclusively to the culpability of the accused must be brought forth; for completing the chain of events, the prosecution must lead cogent evidence to meet the requisite standards.

14. In the case at hand, the onus to inconvertibly establish both demand and acceptance of illegal gratification by the accused under Section 7 and 13 of P.C. Act lay upon the prosecution. However, given the profound contradictions and discrepancies within the testimonies of the prosecution witnesses, an indepth analysis of the surrounding circumstances becomes imperative, particularly, in view of the provisions of Section 20 of P.C. Act, in order to discern as to whether the accused had any occasion to demand any bribe from the complainant. There is no

dispute regarding the principle that upon establishing the acceptance of gratification by an accused, a legal presumption arises that it is in exchange for performing or refraining from doing any official act, however, this presumption is rebuttable. In the present case, the presumption stands rebutted by the unequivocal testimony of the ITO, i.e. firstly, following the formal approval by the accused for the scrutiny of the complainant firm, the accused did not have any jurisdiction or authority over the case of the complainant-firm and had no further role let alone the capacity to delay the proceedings pertaining to the complainant firm as the sole jurisdiction over the assessment/scrutiny of the complainant firm rested solely with the ITO; secondly, scrutiny proceedings of the firm had already concluded a few days prior to the raid in question, by the trap team. Admittedly, no adverse order had been passed by the ITO against the complainant-firm, let alone at the instigation of the accused.

15. Furthermore, notably during the raid by the trap team, only three individuals were present inside the drawing room of the accused: PW-1 Sh. Rajesh Bahl, complainant, who affirmed the demand of bribe, PW-5 Sh. Joginder Pal Singh, shadow witness, who contradicted it and the accused, who vehemently denied both the demand and acceptance. Therefore, certain material admitted facts by the prosecution would have to be delved into as they would also play a crucial role in shedding light on the case as set up by the prosecution.

16. Firstly, the accused sanctioned the scrutiny of the assessment papers of the complainant firm, among 10 others, on 20.11.2001. Subsequently, these files were returned to the ITO; multiple meetings took

place between PW-2, ITO, and the representatives of the complainant firm between 30.12.2001 and 06.05.2002, coinciding with the Income Tax Department assessment deadline of 31.03.2003.

17. Crucially it is not even the case of the complainant firm that it feared any unfavourable assessment decision at the hands of the Income Tax Officer. Further, it is also a matter of record that in April, 2002, when a penalty of Rs.10,000/- was imposed upon the complainant firm, the latter had challenged it before the Commissioner of Income Tax(Appeals) and the jurisdiction rested solely with that Commissioner alone and not with the accused. Additionally, and most significantly, PW-2 ITO confirmed the completion of proceedings relating to the complainant firm on 06.05.2002, coinciding with the scrutiny of their papers. In the above background, the deposition of PW-2, ITO, holds considerable weight, and as already observed earlier, he did not dispute rather confirmed the conclusion of the assessment proceedings of the complainant firm, much before the raid in question by the trap team.

18. All the above circumstances when seen in totality, cast a profound doubt on the veracity of the prosecution case, particularly, in the light of the perplexity surrounding the alleged demand of bribe made by the accused. It is not even the case of the complainant that for altering any adverse order, a demand for bribe was being made by the accused. It has also not been disputed by the learned counsel for the respondent-CBI that the Department had time till 31.03.2003 to complete the scrutiny after which it would have automatically lapsed. Hence, in the light of testimony of PW-2, ITO, as well as certain significant admitted facts by the prosecution,

a question does arise qua the necessity or plausibility of the accused to make any demand of bribe from the complainant which in turn severely weakens the case of the prosecution.

19. Section 20 of P.C. Act provides for presumption of acceptance of gratification as a motive or reward from doing or refraining from doing any official act, but in the present case absence of any cogent and conclusive evidence weakens this presumption. Even the circumstantial evidence fails to convincingly establish the guilt of the accused beyond reasonable doubt. In this background, mere recovery of tainted notes from the drawing room of the accused would be insufficient to prove his guilt.

20. Adhering to the principle "beyond reasonable doubt" the case of the prosecution falls short of meeting the stringent burden of proof required in a criminal case. It has crumbled under the weight of various glaring inconsistencies, contradictory testimonies and absence of compelling cogent evidence directly linking the accused to the alleged demand and acceptance of bribe, as reward or motive to do/not to do any official act.

21. As a sequel to the above, the accused deserves the benefit of doubt and is acquitted of all the charges framed against him. The present appeal stands allowed accordingly.

21.12.2023 **(MANJARI NEHRU KAUL)**
sonia **JUDGE**

Whether speaking/reasoned: Yes
Whether reportable : Yes