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

Reserved on: December 03, 2020

Pronounced on: January 21, 2021

+ **CRL.A.692/2010**

P.C. MISHRA

..... Appellant

Through: In person

Versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Rajesh Kumar, Special Public
Prosecutor

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

The hearing of the appeal was conducted through video conferencing.

1. The present appeal has been filed by the appellant seeking to set aside the judgment dated 24.05.2010 passed by Special Judge, Delhi in CC No.31/2008 [CC No.62/1999 (old number)], vide which he has been held guilty and convicted for the offences under Sections 7 and 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act, 1988 (hereinafter referred to as the "PC Act") and order on sentence dated 26.05.2010, vide

which he has been directed to undergo rigorous imprisonment for two years with fine and default clause.

2. The case of prosecution against the appellant is that on 28.02.1996 while working as Assistant Commissioner-V (Appeals), Sales Tax Department, Bikri Kar Bhawan, New Delhi, demanded a sum of ₹4,000/- as illegal gratification from Shri Gulshan Sikri Proprietor of M/s Filtrex India, Nangal Raya, New Delhi, for favouring him in the matter of appeal pending before him and in furtherance of this demand, he on 01.03.1996 at about 12.40 pm in the Sales Tax Office, I.P. Estate, New Delhi demanded a sum of ₹ 4,000/- from Shri Gulshan Sikri, complainant and directed the complainant to hand over the demanded money to his Reader Shri Ravi Bhatt, who on 01.03.1996 accepted the same as per direction of the appellant and on his behalf as illegal gratification, other than legal remuneration as a motive or reward for favouring the complainant and thereby, he committed an offence punishable under Section 7 of P.C. Act, 1988 read with Section 13 (1) (d) and 13 (2) of the said Act.

3. The charge against the appellant was framed vide order dated 08.02.2000 and thereafter, trial of the case came into motion.

4. To prove its case, the prosecuting agency examined 17 witnesses and appellant examined 01 defence witness. After considering the evidence of the witnesses, the learned Trial Court convicted the appellant. Being aggrieved by the impugned judgment and conviction, the present appeal has been filed.

5. The facts of the case in brief are that the appellant was working as Asstt. Commissioner, Sale Tax Department. An appeal case filed by PW 5 Gulshan Kumar Sikri (the complainant) was pending adjudication before the appellant. During the course of hearing of the appeal on 28.02.1996, the appellant allegedly demanded Rs. 4000/- as bribe for deciding the said appeal in his favour. A raid was organized by the CBI official with the aid of electronic devices and with the help of public Panch witnesses, who were required by the raiding officer for listening to the conversation between the appellant and the complainant and simultaneously, the conversation transpired between them was also recorded on one micro cassette and other normal cassettes. The complainant was directed to pay the bribe amount to his reader Ravi Bhatt, UDC (co-accused), who was sitting in another room. The complainant allegedly gave the bribe money to Ravi Bhatt in his

separate room, who was immediately apprehended by trap laying officer and recovered the bribe money from the left side pocket of his pant.

6. The appellant appeared in person and submitted that he and co-accused were arrested and on the next day i.e. 02.03.1996, they were produced before Special Judge, Delhi at 02:00 pm. The said Judge while granting bail on 02.03.1996 to both of them, reprimanded the C.B.I. officers and passed severe strictures after going through the case diaries and ordered as under:-

“till date no statement of the complainant or Panch witnesses has been recorded by the prosecution though the accused persons were arrested at about 2.00 P.M. yesterday. No transcription of the conversation between the accused P.C. Misra and the complainant has been prepared nor the alleged cassettes containing the conversation have been produced before me today. The recovery memo prepared by the raid officer does not give the exact conversation between the complainant and the accused and contains only descriptive statement showing that the accused (P.C. Misra) had directed the complainant to pay the money to accused Ravi Bhatt’. The special judge Delhi further observed that ‘there is absolutely no evidence of any directions having been given by accused P.C. Misra to complainant to give money to accused Ravi Bhatt before this court.”

7. Thereafter, the investigating officer investigated the case further and recorded the statement of witnesses. During the course of investigation on

06.08.1996, Ravi Bhatt co-accused moved an application in the court of Special Judge, Delhi for recording his confessional statement U/s 164 Cr.P.C. and said application was marked by the Ld. Special judge to Shri Rakesh Garg, Ld. M.M. who recorded the statement of Ravi Bhatt U/s 164 Cr.P.C. on 07.08.1996. On 24.10.1996, the investigation officer, A.K. Kapur, instead of using the confessional statement for securing a conviction against accused Ravi Bhatt, moved an application before Ld. Special Judge, for grant of pardon to him on account of his personal/vested interest. The Ld. Special Judge neither considered the application nor passed order U/s 5 (2) of Prevention of Corruption Act, 1988, but instead directed the Ld. C.M.M. to dispose of the application. The learned C.M.M. further directed the application to Sh. Praveen Kumar, Ld. M.M. The Ld. M.M. vide his order dated 02.11.1996, granted pardon to the said Ravi Bhatt U/s 306 Cr.P.C. Thereafter, charge-sheet was filed on 20.05.1998.

8. The appellant further submitted that the Trial Court noted in Para-24 of order dated 24.05.2010 that the complainant PW 5 did not support the case of the prosecution. The relevant portion of the said para is reproduced as under:

“24. Consequently, the submission is that when the said witnesses particularly PW 5 Shri Gulshan Kumar

Sikri did not depose at all about any bribe having been demanded by the accused, question of corroboration thereof, does not arise at all. Resultantly, there is a prayer for acquittal of the accused.”

9. The Ld. trial court also noted in para-35 of the judgment as under:-

“.....PW-5 Shri Gulshan Sikri had also deposed that P.A. of the accused had been demanding Rs.8000/- to Rs. 10,000/- significantly, the said complainant PW5 Shri Gulshan Kumar Sikri did not depose in the court that the bribe amount had been demanded by the accused on 28.2.1996 from him. Based on this testimony, the argument of Ld. Defence counsel is that prosecution has miserably failed to prove that any demand of bribe had been made by the accused on 28.2.1996 and therefore accused is entitled to be acquitted particularly when the S.P. concerned has not been examined.”

10. It was submitted by the appellant that the Ld. Trial Court passed this order without due application of mind and in violation of all canons of justice and laws declared by Hon'ble Supreme Court and without invoking Section 20 of the P.C. Act, 1988.

11. To strengthen his arguments, appellant relied upon the judgment passed in the case of ***State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede***, (2009) 15 SCC 200 wherein it is held in para 16 as follows:

“Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to

whether all the ingredients of an offence, viz, demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-vis the standard of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.”

12. It was submitted that the prosecution has a duty to prove the foundational facts, however, in the present case the facts of demand, acceptance and recovery are absent. The Hon'ble Supreme Court in the case of ***B. Jayraj v. State of Andhra Pradesh*** 2014 CrI.L.J. 2433 in unequivocal terms has held as under:

"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under section 7 unless.....

8.Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section.

9.Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Section 13(1)(d)(i)(ii) of the act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand.....”

13. It was, accordingly, submitted by the appellant that in ***B. Jayraj*** (*Supra*), the Hon'ble Supreme Court acquitted the appellant therein though there was acceptance and recovery of money but the complainant turned hostile and did not support demand. He further submitted that the Hon'ble Supreme Court in the case of ***P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh & Anr.*** (2015) 10 SCC 152 held that the proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) & (ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. On the matter of demand and acceptance inferential deduction is not permissible in law. Further held that in reiteration of the gold principle which runs through the web of administration of justice in Criminal cases. Moreover, in ***Sujit Biswas vs. State of Assam***, (2013) 12 SCC 406, it is held that suspicion, however, grave, cannot take the place of proof and the prosecution cannot

afford to rest its case in the realm of may be true but has to upgrade it in the domain of “must be” true in order to steer clear of any possible surmise or conjecture. It was held that the court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.

14. Appellant further submitted that there is no demand or solicitation of money from the complainant, namely, Gulshan Sikri, who specifically deposed the truth before the court that the appellant has not demanded any money from him and explained to the Court during cross-examination that he was being misguided by the CBI officials to file a false complaint against the appellant for their vested interest. In addition, appellant submitted that no money was given by anybody to him nor money was recovered from his person. He further submitted that no incriminating materials were recovered during the raid at his home on 01.03.1996.

15. Regarding admissibility of the tape recorded voice, the appellant submitted that the Hon'ble Supreme Court in the case of ***Nilesh Dinkar Paradkar Vs. State of Maharashtra***, (2011) 4 SCC 143 observed and laid down the law / conditions of admissibility of tape recorded voice as evidence in the court as follows:

“30. In our opinion, the evidence of voice identification is at best suspect, if not, wholly unreliable. Accurate voice identification is much more difficult than visual identification. It is prone to such extensive and sophisticated tampering, doctoring and editing that the reality can be completely replaced by fiction”. They are admissible in evidence on satisfying the following condition:

d. The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who know it.

e. Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record.

f. The subject-matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act.”

16. The Hon'ble Court reiterated the condition laid down in the case of ***Ram Singh & Ors. vs. Col. Ram Singh***, 1985 SCC (Supp.) 611 that voice of the speaker must be duly identified by the maker of the record or by others who recognize his voice. In other words, it manifestly follows as logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker. The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence direct

or circumstantial. Every possibility of tampering with or erasure of a part of a tape recorded statement must be ruled out otherwise it may render the said statement out of context and therefore, inadmissible. The statement must be relevant according to the rules of Evidence Act. The recorded cassette must be carefully sealed and kept in safe or official custody. The voice of the speaker should be clearly audible and not lost or distorted by other-sounds or disturbances.

17. Appellant further submitted that the tape was not sealed on the spot/office of the appellant rather it was taken outside to Palika Bazar, Connaught Place, New Delhi for the reasons best known to them, on the plea of preparation of copies by Inspector Mr. Thakran, however, he was not examined during trial though he was a listed witness. The tape was handled by unauthorized technician in the market whose name and shop was not disclosed by the prosecution. The shadow witness Sh. Kailash Chander stated in his deposition that the copy of the cassette was prepared by Mr. S.K. Pashin in contradiction to Mr. Thakran. Mr. D.D.Negi Inspector / TLO in the 161 Cr.P.C. statement of Kailash Chander referred to tampering. When the court of the Special Judge desired to hear the conversation, the TLO / Inspector Mr. D.D. Negi did not produce anything whereas, it was his

duty to deposit the original tape in the court itself. On this, Court observed as under:

“No transcription of the conversation between the accused P.C. Misra and the complainant has been prepared nor the alleged cassettes containing the conversation have been produced before me today.”

18. The Hon'ble Supreme Court in Para 32 confirm the observations in the case of ***Mahabir Prasad Verma Vs. Dr. Surinder Kaur***, 1982 (2) SCC 258 by observing as under:

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

19. The appellant submitted that the Trial Court has overlooked the material evidence on record in his favour and the settled position of law, therefore, impugned judgment and order of conviction and sentence deserve to be set aside and consequently, while allowing the appeal, he be acquitted from all charges.

20. Learned SPP for CBI, while opposing the present appeal, has submitted that during trial CBI examined 17 witnesses to prove entire prosecution case. PW 1 (Sh. Jalaj Srivastava, Deputy Secretary to the

Government of India) has proved the sanction order Ex. PW1/A and under the transaction of 'Business Rules', the said witness was quite competent to make and execute the order in the name of the President or the Union Minister of State in the Ministry of Home Affairs, as is evident from the Notification dated 03.11.1958 issued by Ministry of Home Affairs, New Delhi. The Sanction Order had been passed after application of mind and considering all the material and document which were placed before the Sanctioning Authority including the transcription of the audio cassette. Further, Ex. PW1/A clearly shows that the complete facts constituting the offence under Section 7 and 13(1)(d) r/w 13(2) of the Act, were before the Sanctioning Authority.

21. PW 2, Rajinder Singh, SSO Grade-I, CFSL had examined the voice in the cassette marked Q1 and S1 by auditory and voice spectrographic technique and found that the voice in cassette Q1 and S1 are similar in respect of their acouspic cues, narrowband characteristics and fundamental frequency, hence, gave report that the voice in cassette Q1 and S1 are probable voice of same person and proved the Ex PW2/A.

22. PW 3, Rakesh Garg, Ld. MM, Tis Hazari Court proved the statement of PW-9 Sh. Ravi Bhatt (Ex PW3/A) recorded under section 164 Cr.P.C.

after satisfying himself that PW 9 is giving statement voluntary. The aforesaid witness further proved application Ex PW3/B for recording statement under section 164 Cr.P.C.

23. PW 4, Praveen Kumar, Ld. MM, Tis Hazari Court had granted the pardon to the PW 9, Mr. Ravi Bhatt after cross questioning and considering the document available before him and proved the documents i.e. Ex.PW4/A to PW4/DA.

24. PW 5, Sh. Gulshan Kumar is complainant of this case who proved his complaint Ex.PW5/A in which it was categorically mentioned about the demand made by the appellant. He further proved Ex.PW5/B and also proved statement mark Ex.PW5/C. The aforesaid witness has proved the recovery memo Ex.PW5/D and the transcript Ex.PW5/E.

25. PW 6, Rakesh Kumar, Head Clerk, Northern Railways, Baroda House, New Delhi has proved the memo Ex.PW6/A which was prepared for taking voice sample of appellant and he further proved one envelope containing micro cassette and other meltrake cassette in cloth wrapper and identified the signature at the cloth wrapper.

26. PW 7, Prithvi Raj Meena, Joint Commissioner (Transport), Govt. Of NCT, Delhi has proved the Ex. PW5/D recovery memo. PW 8, Sh. Arjun

Bulandani, Section Officer, NDMC has proved the pre and post trap proceedings.

27. PW 9, Mr. Ravi Bhatt, PA of the P.C. Mishra became approver in this case. He deposed before the Ld. Trial Court that the complainant came on the date fixed i.e. 29.02.1996 at about 11.00 am and PW 9 informed the appellant about the arrival of the complainant in his matter for hearing. After keeping the file before the officer, PW9 came out of the room of the appellant and appellant instructed him to send the complainant inside room. After about 10 minutes, PW 9 again entered the room of appellant with some other files and at that time he was saying to the appellant '*ek hazar rupaye lekar mera kaam kar do*'. The appellant was saying '*itne mein kaam nahi hoga, chaar hazar mein ho jayega, warna yeh case dismiss kar dunga*'. At about 4.00 and 4.30 pm, PW 9 entered the room of the appellant requesting him to hand over the files of the decided cases as well as the files in which dates have been given so that he could keep them at their proper places and appellant asked PW 9 to leave the file of M/s Filtrex India Co. on his table as Mr. Gulshan was to visit him in his office on the next day alongwith Rs. 4000/-. The appellant also said to the PW 9 '*unse leke ye paise mujhe de dena*'. Next day at about 11.00 am or 12.00 noon, Sh.

Gulshan came to PW 9 and informed that he wanted to see appellant and PW 9 got up from his seat to inform the appellant and in the meantime Mr. Gulshan also followed him to the room of the appellant and requested him to decide his case after taking Rs. 3000/-. The appellant uttered the words '*yeh bhindi bazar hain, jahan approach se kaam karana chahte ho. main apka case dismiss kar dunga*'. Then PW 9 came out of the room of the appellant. After about 5 minutes Mr. Gulshan came to PW 9 and handed over Rs. 4000/- saying '*yeh sahab ko de dena, baat ho gayi hain*'. Further submitted, when the PW 9 was present in the room of the appellant and he was snubbing the complainant but the appellant also gave signal to PW 9 to accept the money. After taking the money from Mr. Gulshan, PW 9 kept the same in his left pant pocket and when PW 9 was going to the room of the appellant alongwith the money, he was trapped by the CBI officials, namely, Mr. Negi and Mr. Kapoor to the room of the appellant.

28. PW 10, Kailash Chand, (Retd.), the then Section Officer, NDMC who is independent witness and he proved the pre and post proceeding and also proved the recovery memo Ex.PW5/D, personal search memo of the appellant Ex. PW8/A, tainted GC notes Ex.PW1/1 to PW1/40, bottles Ex.P-2 and Ex.P-3, cloth wrappers Ex.P -and Ex.P-5 and pant wrapper Ex.P-6,

micro cassettes and audio cassettes Ex.P-7 and Ex.P-8, respectively, containing specimen voice of the appellant, micro cassette and meltrake cassette containing conversation recorded at the spot Ex.P-9 and Ex.P-10 respectively, cloth wrapper with which cassettes were rapped Ex.P-11 and Ex.P-12. The transcript was prepared vide memo Ex.PW5/B on that day in the presence of aforesaid witness.

29. PW 11, Jagdish Singh, UDC, Labour Department has proved the memo and the photocopies of the dispatch register Ex.PW11/A and Ex.PW11/B, respectively. PW 13, Sh. P. Nath, SSO-II, CFSL, CBI, New Delhi has proved CFSL report Ex.PW13/A.

30. PW 14, Dharma Dev Negi, Sub-Inspector, Crime Branch New Delhi was trap laying officer and proved entire pre and post trap proceedings. He also proved the demand and acceptance by the appellant, the FIR Ex.PW14/A. Also proved Ex.PW5/B and Ex.PW5/D and further proved the Ex.PW14/C.

31. PW 15, Sh. S.K. Peshin, SP, CBI, EOU-VIII, CBI, New Delhi was appointed to supervise the trap operation. The witness proved the pre and post trap proceeding and also categorically stated the recovery of the amount from Mr. Ravi Bhatt and the statement that he received that bribe amount on

the instruction of the appellant. He further proved the recovery memo Ex.PW5/D and personal search memo of the appellant Ex.PW8/A.

32. PW 17, Sh. A.K. Kapoor, (Retd.), the then Deputy Central Intelligence Officer, Delhi had done the investigation and recorded the statements. He proved the recording of specimen voice of the appellant before the two independent witness as memo Ex.PW6/A and prepared the transcript Ex.PW5/E vide memo Ex.PW8/B, seizure memo Ex.PW11/A, pardon application Ex.PW4/DA. This witness categorically stated that the cassettes were sealed when he received from the Malkhana for preparation of transcript and again sealed both the cassettes in presence of the witnesses. He further proved the pardon application Ex PW17/A.

33. Statement of appellant recorded under section 313 Cr.P.C. wherein he accepted the date of hearing of the matter of the complainant was 28.02.1996 and reserved the same for the order. He further accepted the recovery of bribe amount from the left pocket of Mr. Ravi Bhatt.

34. DW 1, Sh. Omkar was examined as defence witness. The aforesaid witness could not disprove the prosecution case.

35. Learned SPP for CBI submitted that from bare perusal of documents on record specially written complaint Ex. PW5/A lodged by the

complainant, PW 5 clearly shows demand made by the appellant for passing favourable order in favour of the complainant. After receipt of aforesaid complaint Sh. Dharamveer Negi, Sub Inspector, Crime Branch, Delhi (PW 14) secretly verified the genuineness of the complaint from his secret sources and he found the complaint to be genuine. Thereafter, trap was laid. PW 9 Mr. Ravi Bhatt, who later became approver and appellant were arrested. The pre trap and post trap proceedings have been proved by the prosecution by Ex.PW5/B, Ex. PW5/C, Ex. PW5/D and Ex. PW14/B.

36. The demand and acceptance was further proved from the deposition of PW 9 and PW 14. PW 9 (Mr. Ravi Bhatt) has proved entire case on material aspects. PW 14 in his deposition has categorically stated *“I was hearing the conversation through earphone and I heard that the complainant was requesting the accused for reducing the amount of bribe from 4,000/- to 3,000/-. I also heard the accused directed the complainant to hand over the bribe to his PA.”*

37. Further submitted that despite the fact that PW 5 turned hostile, the prosecution proved the entire case beyond reasonable doubt and hence, the Trial Court vide judgment dated 24.05.2010 convicted the appellant.

38. To strengthen his arguments, learned SPP for CBI has relied upon the judgment passed in the case of *Madhu Koda vs. State* MANU/DE/1079/2020 wherein this Court made observations and the relevant paras of the said judgment are as under:

“...3. The appellant has been convicted by the impugned order in a case captioned “CBI v. M/s. Vini Iron and Steel Udyog Limited and Ors.” arising from FIR No. RC 219 2012 E 0012. The Trial Court found that the appellant had abused his position as a public servant in order to obtain the allocation of Rajhara Coal Block in favour of M/s. Vini Iron and Steel Udyog Limited (hereafter 'VISUL'), without any public interest.

.... 7. Mr. R.S. Cheema, learned senior counsel appearing for CBI countered the aforesaid submissions. He stated that the provisions of Section 13(1)(d) of the PC did not necessarily require establishing that any illegal gratification had been demanded or paid to the public servant. He relied upon the decisions of Supreme Court in Neera Yadav v. CBI: MANU/SC/0931/2017 : (2017) 8 SCC 757; C.K. Jaffer Shareiff v. State: MANU/SC/0960/2012 : (2013) 1 SCC 205; R. Venkatkrishnan vs. CBI: MANU/SC/1411/2009 : (2009) 11 SCC 737; and State of Rajasthan vs. Fatehkaran Mehdu: MANU/SC/0111/2017 : (2017) 3 SCC 198.

.....30. Although the above proposition appears attractive, a closer examination of the aforesaid decisions clearly indicate that the same cannot be read as authorities for the proposition that demand of an illegal gratification is a necessary condition for convicting a public servant for an offence of misconduct, as contemplated under Section

13(1)(d) of the PC Act. This is for two reasons. First of all, the plain language of Section 13(1)(d) of the PC Act does not indicate that a demand of illegal gratification by the public servant is an essential ingredient of an offence of misconduct.

.... 35. In this case also, the prosecution had neither established nor was required to establish that the accused had demanded or obtained any illegal gratification for obtaining for any person any valuable thing or pecuniary advantage.

36. Thus, the contention that it is necessary for the prosecution to establish a demand for illegal gratification for sustaining the allegation of an offence under Section 13(1)(d) of the PC Act as in force prior to 26th July 2018, is without merit.....”

39. It was submitted by learned SPP that the appellant has sought acquittal on the ground of minor discrepancies in the investigation. The Hon’ble Supreme Court in case of **Zindar Ali SK vs State of West Bengal Ors.** MANU/SC/0141/2009 has categorically held that defence cannot take advantage of bad investigation, when there is a clinching evidence.

40. Further submitted that the appellant has also pointed out some minor contradictions for seeking acquittal. It is settled proposition of law that minor contradictions in prosecution case can be ignored if cogent evidences are available on record for conviction of the accused. He relied upon the judgments passed in case of **Krishna Mochi & Ors vs State of Bihar**

MANU/SC/0327/2002 and **Girwar Singh & Ors. Vs CBI**
MANU/DE/4551/2015.

41. Further the Supreme Court in case of **Subramanian Swamy vs Manmohan Singh & Ors.** MANU/SC/0067/2012 held as under:

“Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it.”

42. While concluding his arguments, learned SPP submitted that from bare perusal of evidence on record it is evident that CBI has duly proved entire prosecution case with the help of oral and documentary evidences. The grounds raised by the appellant are against the legislative intent of Prevention of Corruption Act and further the same are against the spirit and mandate of the law laid down by Hon’ble Supreme Court. Accordingly,

learned SPP for CBI prayed that in the light of above-mentioned facts and circumstances of the present case, appeal filed by the appellant may be dismissed.

43. I have heard the appellant and learned SPP for respondent/CBI and perused the material on record.

44. The approver / PW-9 in his examination-in-chief stated after about 10 minutes, he again entered the room of appellant with some other files and at that time the owner Mr. Gulshan was saying to the appellant *“ek hazar rupaye lekar mera kaam kar do”*. The appellant was saying *"itine mein kaam nahi hoga' chaar hazar mein ho jayega, warna yeh case dismiss kar dunga"*. The defence counsel cross-examined the approver in respect of all deposition and confronted. It is amply clear that the approver is not a reliable witness and in fact he was not present in the room of the appellant.

45. PW 5 did not authenticate the contents of his complaint dated 29.02.1996. He deposed that *“I took my complaint to SP, CBI and met him, I told the SP, CBI that my Sales Tax appeal with regard to my firm M/s. Filtrex India is pending before Shri Mishra, accused present in the Court today. I also told SP that PA of Shri Mishra was demanding Rs. 8000/- to Rs. 10,000/- for paying the same to the officer”*. Further, in his cross-

examination PW 5 stated that *“my Complaint was dictated by Mr. Negi again said by Mr. Peshin of CBI that they are not meant for clerical staff and I should name the official in the complaint. Accused did not demand the money directly from me”*. Since the SP Mr. Kaumudi was not examined by the prosecution and the complainant PW 5 deposed against his own complaint /FIR and the PW 10 in his cross-examination stated in the First para as follows:

“The Complaint had already been written and it was only shown to us. I do not know the name of the inspector who is holding their complaint.”

46. On cross-examination, by PP of CBI, the witness, PW 5, stated (at page 3) *“it is correct that I met P.C. Misra on 28.02.96 and after considering my documents he reserved the order, but it is not so that he demanded Rs.4000/- from me for favorable order in my case.”*

47. In cross-examinations by the defence counsel, PW 5 stated that accused did not demand the money directly from him. Regarding demand during trap, PW 5 stated that the appellant did not demand any money from him. Further, he stated in his examination-in-chief that on 10.05.05, appellant was saying *“Kya hum isee kam keliye baithe hai.... App bahar jaiye..... mera dimak kharab mat karo”*.

48. This amply demonstrates that there is no demand, during pre-trap or during trap, by the appellant. Thus, he neither demanded nor accepted money. On the other hand, PW9 Ravi Bhatt had demanded and accepted the gratification.

49. Moreover, PW 5/ the Complainant Shri Gulshan Sikri in cross-examination stated as follows:-

“On the day of trap I remained in the room of accused for about 2-3 minutes. Shri Ravi Bhatt, did not enter the room of the accused during those three minutes. He remained in his own room.”

50. PW 8/Shri Arjun Bulandni, independent witness stated in his examination-in-chief as follows:

“The Complainant entered the room of P.C. Misra alone and I remained outside the room.”

51. PW 10, Shri Kailash Chandra, shadow witness stated on page 2 of his examination-in-chief that *“Complainant alone entered the room of Asstt. Commissioner. He was also directed by Mr. Peshin that after entering the room, he should talk to the concerned person and the moment bribe is accepted, he should give a signal by coughing and then they will enter. The complainant came out of the room and entered another room which was of*

the PA. He was able to see from his seat that the complainant paid the money to the PA”.

52. PW 15/Shri S.K. Peshin, PP, CBI stated in his deposition in examination-in-chief, *“thereafter complainant Shri. Sikri went inside tile office of the accused and came out after sometime. After sometime again he went inside the room of accused (present in the Court) and after sometime came out and directly proceeded to the room of one persons subsequently identified as Ravi Bhatt, who was Reader of accused. Both complainant and Ravi Bhatt were seen moving towards the room adjacent towards the room of Shri Ravi Bhatt.”*

53. In the bail order dated 02.03.1996, the Court of Special Judge noted in Para 2 of the order as follows:-

“Accused P.C. Misra allegedly directed the complainant to pay the bribe amount to his reader Ravi Bhatt UDC (co-accused). Ravi Bhatt accused was sitting in another room. The complainant allegedly gave the bribe money amounting to Rs. 4000/- to Ravi Bhatt, accused.”

54. However, PW 14, Shri D.D. Negi, falsely stated in examination-in-chief that *“complainant first contacted Mr. Bhatt, PA of accused who took the complainant in the room of the accused P.C. Misra”*. This point got

confronted in cross-examination by the defence counsel Mr. Sunil Mehta as follows:

“It is correct that the complainant at first gone to the room of the PA of the accused, but it is incorrect that thereafter he came back to him. The witness has been confronted with the portion A to A of ex. PW-5/D where it is recorded that the complainant came back after sometime and informed that Mr. Ravi Bhatt, UDC/reader was in his room (Ravi Bhatt's) and he shall be proceeding inside the room of P.C. Misra shortly. The witness is confronted with portion of A to A of statement Ex.PW-14/C and witness admits the correctness thereof. I did not enquire from the complainant as to why he did not come to the room of the P.C. Misra for handing over the money and also about his purpose of visit to the room of Ravi Bhatt. It is correct that in the recovery memo Ex.PW5/D it was not mentioned that the complainant first contacted Mr. Bhatt, PA to the accused who took me to the room of accused, P.C. Misra. It is correct that I have not mentioned in the recovery memo, Ravi Bhatt was seen going inside the room of the accused, P.C. Misra.”

55. On the basis of the deposition /statements discussed above, it is proved beyond shadow of doubt that Shri Ravi Bhatt/PW 9 was never inside the room of the appellant while PW 5 was present in the room of the appellant. Therefore, the statement of PW 9 on the issue of his presence in the room of the accused on 01.03.1996 during trap is totally false, not corroborated in material particulars from independent source.

56. In case of *Javed Masood Vs. State of Rajasthan*, AIR 2010 SC 979, the Hon'ble Supreme Court has held "*Witness not declared hostile by prosecution - His evidence is binding on prosecution*". Ld. Prosecutor never declared PW 8, 10 & 15 hostile, neither cross-examined on this point nor made any suggestion to PW 5. Therefore, it is proved that PW 9/approver was never present in the room of the appellant during the talk of PW 5 with the appellant. Since PW 9 was not present in the room of the appellant, there is no question of direction from him to accept bribe from complainant. Moreover, the PW 9 cannot be an accomplice nor co-conspirator. All his deposition statement is neither relevant nor admissible u/s 10 of the Evidence Act. In fact, the same is barred u/s 60 of the Evidence Act as it is only hearsay. Therefore, the testimony of the approver is liable to be rejected only on this ground.

57. Regarding recovery, PW 9 in his application before the Special Judge on 02.03.1996 denied recovery from him and PW 14/TLO deposed that money was recovered from the drawer of the table of PW 9. Again he stated that the trap money was recovered from the left side pocket of the coat and in cross-examination stated that money was recovered from the left side pant pocket. Therefore, according to the PW/TLO and statement of PW 9 before

the Special Judge that there was no recovery. The recovery of money becomes seriously doubtful. The TLO admitted in his cross-examination by learned PP that he is a confused person.

58. It is pertinent to mention here that in this case four prosecution witnesses have been declared hostile by Mohd. Sakil, Prosecutor of the CBI, as under:

PW-5: Shri Gulshan Sikri/Complainant

PW-7: Shri P.R. Meena, Joint Commissioner, Transport

PW-12: Shri H.D. Mahi, Ex. Asstt. Commissioner, Food & Supply Deptt.

PW-14 Shri D.D. Negi, Inspector CBI/TLO

59. Further important to mention that the prosecution did not examine Shri V. Thkaran, Inspector, CBI (listed Witness No. 14), Shri T.V. Kuriahose, Sub Inspector, CBI (listed witnessed No.15) also the CBI did not examine the person who prepared copy of the tape of the voice recording in Palika Bazar Market, Connaught Place, New Delhi and also the *Malkhana Mohair* who kept the recorded typed in custody. In addition, the SP, CBI Shri Kamadi Komal who ordered registration of FIR RC No. 15(A) 96, was

also not examined. All these factors are against the prosecution and creating serious doubts on the veracity of the prosecution story.

60. In view of above, the Ld. Special Judge committed error of law getting corroboration for the deposition of PW 9/Approval for his earlier statement under Section 164 Cr.P.C., which is prohibited under law. The approver stands as a special guilty witness and hence, Sections 145/157 of Evidence Act is not applicable.

61. In addition to above, PW 17, A.K. Kapur, Inspector, CBI/IO in cross-examination stated that *"I got this application Ex. PW-17/A typed in CBI Office at Tis Hazari. I did not consult the public prosecutor before typing this application. I also did not consult the then SP. The name of the Court is mentioned as the Court of Sh. Ajit Bharioke, Speical Judge, CBI in the application as the same was the concerned court. I am not aware if there is special provision for tender of pardon in PC Act, 1988. It is incorrect to suggest that I have illegally mentioned Section 306 Cr.P.C. in the application to misguide the Court. I do not remember if I consulted the Petitioner or not before filling the application. I do not remember if I had brought the case file of this case while making the application before the Special judge for grant of pardon. I do not remember if I had shown the*

·case dairy to the Judge or not”. This shows how the CBI Inspector who enforces the PC Act is not aware of Section 5(2) where the Special judge has exclusive jurisdiction for grant of pardon. Since this application is typed by him and without the assistance of the prosecutor, he filed personally in the court of Special Judge. Thus, it seems that he had vested interests in getting pardon to Sh. Ravi Bhatt, UDC who is caught red handed.

62. Since there is no recovery from the appellant, presumption U/s 20 of the Act regarding acceptance of bribe could not be raised against him. There was neither any demand nor acceptance or recovery from the appellant. Hence, all the ingredients of an offence U/s 7 and 13(1)(d) could not be satisfied. The conviction order is *prima facie* unlawful as Section 20 of the Act is not invoked.

63. In addition to above, in the instant case PW 5 is bribe giver and he is an abettor for the offence of PW 9 for acceptance of bribe. The appellant could not give a direction to PW 5 to give money to somebody else. PW 9 could not be the agent/accomplice of the appellant since he is also a government servant. PW 5/Complainant stated in examination-in-chief, “*I told that PA yeh sahab ne diya paise rekh lo*”. But he stated while being examined by PP while playing the cassette “*yeh chhar hazar rekh lo mere*

file dekh lena" but the PW 9/ approver stated in examination-in-chief that the complainant handed over four thousand rupees saying "*yeh paise shaab ko de dena, baat ho gaye hain*". The approver/ PW 9 while being examined by PP stated that the talks between him and PW 5 was not audible. Thus, there is no sentence/talk on behalf of PW 9. Moreover, the statements of PW 5 are contradictory to each other and there is no corroboration of any kind. Thus, this is a material contradiction and cannot be relied upon to see the transaction between PW 5 and PW 9.

64. Since the appellant did not demand any money from PW 5, there was no question of having an accomplice to receive money, as the complainant met the appellant and got the opportunity to give money when he was alone in his chamber, and talk to complainant.

65. In the case of *Surjit Biswas Vs. State of Assam*, (supra), the Supreme Court observed in para 6 as under:

"6. Suspicion, however grave it may be, cannot take the place of proof....."

66. Further observed in Para 7 & 8 that if two views are possible the view which is favourable to the accused should be adopted. This principle has a special relevance in cases where in the guilt of the accused is sought to be

established by circumstantial evidence. The circumstances should be of a conclusive nature and tendency.

67. The case is filed by CBI U/ s 7 and 13 (1)(d) of PC Act, 1988 against the appellant. This Court in the case of ***L.K. Advani Vs. CBI***, 1997 (4)

Crime 1 analysis Section 7 in Para-49 & 50 and held as under:

“49..... a duty has been cast on the shoulders of the prosecution, for framing of a charge under Section 7 of the Act, to prima facie show that a public servant accepted or obtained any gratification other than legal remuneration as a motive or reward for doing or forbearing to do any official act by way of favour or disfavor to; any person in the discharge of his official duties”.

50. The meaning of the word “accept” as per Oxford English Dictionary Vol. 1, page 70 is “to take or receive (a thing offered) willingly, or with consenting mind; to take formally (what is offered) with contemplation of its consequences and obligations”. On the other hand, the word “Obtain” as per Oxford English Dictionary Vol. X (page 669) would mean (a) to come into possession or enjoyment of (something) by one's own effort, or by request; (b) to procure or gain, as the result of purpose and effort; hence, generally to acquire get. Thus both the words “accept” and obtaining signify an active conduct on the part of the person in accepting or obtaining a thing. Thus if something is thrust into the pocket of a person without his consent and without a request from his side it would not be an acceptance or obtainment of the said thing on the part of the person in whose pocket the same is inserted or thrust, within the meaning of Section 7 of the Act.”

68. The demand and acceptance can be proved beyond reasonable doubt only if there is recovery which is a direct evidence of bribery. In the instant case, it is admitted by the CBI that there is no recovery from the appellant. Consequently, demand and acceptance become doubtful. The complainant / PW 5 became hostile to the prosecution case and did not support demand. The trial court also did not invoke Section 20 of the PC Act. Without invoking Section 20 there cannot be a conviction U/s 7 and consequently, corollary conviction U/s 13(1)(d) cannot be upheld.

69. In view of above evidence on record in favour of the appellant and the settled position of law, I am of the considered opinion that the prosecution has failed to prove its case against the appellant beyond a reasonable doubt. Moreover, learned Trial Court has overlooked the material on record in favour of the appellant. Thus, the impugned judgment deserves to be set aside.

70. Accordingly, the appeal is allowed and impugned judgment dated 24.05.2010 and order on sentence dated 26.05.2010 are hereby set aside. Consequently, appellant is acquitted from the all the charges.

71. The appeal stands accordingly disposed of.

72. Copy of this judgment be communicated to the Trial Court and Jail Superintendent concerned for necessary information and compliance.
73. The judgment be uploaded on the website of this Court forthwith.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 21, 2021
rk/r

