Harish Chand Khurana Vs State

Criminal A No. 953 of 2004

Court: Delhi High Court

Date of Decision: May 30, 2012

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 161, 313, 342, 428#Evidence Act, 1872 â€" Section 114, 4#Penal Code, 1860 (IPC) â€" Section 161, 165#Prevention of Corruption Act, 1988 â€" Section 11, 13, 13(1)(d), 13(2), 20

Citation: (2012) 8 AD 466

Hon'ble Judges: Suresh Kait, J

Bench: Single Bench

Advocate: Jagat Rana and Mr. Ravinder Singh, for the Appellant; Sonia Mathur for CBI with Mr. Sushil Kr. Dubey, for the Respondent

Final Decision: Dismissed

Judgement

Suresh Kait, J.
Vide the instant Appeal, appellant has challenged the judgment dated 25.11.2004, whereby he was held guilty for the

offences punishable u/s 7, 13(2) read with Section 13 (1)(d) of Prevention of Corruption Act and convicted accordingly. Also challenged the order

on sentence dated 29.12.2004 vide which he has been sentenced to undergo RI for a period of 02 years and to pay a fine of Rs.10,000/- for the

offences punishable u/s 7 of the Prevention of Corruption Act.

2. He is further sentenced to undergo RI for 03 years and to pay a fine of Rs.10,000/- for the offences punishable u/s 13(2) read with Section

13(1)(d) of the Prevention of Corruption Act.

3. Ld. Trial Court has directed that both the substantive sentences shall run concurrently and period of detention already undergone during

investigation / trial of the case if any, shall be set off u/s 428 Cr.P.C.

4. The case in brief is that on 17.10.1994, Complainant Ashok Kapoor, Director, M/s. Acon Construction India Pvt. Ltd. submitted a quotation

for construction of dust proof Air-conditioned Building Complex at IARI, Pusa along with other pre-qualified Firm, which was invited by Rashtriya

Pariyojana, Nirman Nigam Ltd. for the above said construction work.

5. M/s. Acon Construction Pvt. Ltd. was also a pre-qualified firm by RPNN Ltd. The petitioner was functioning as Sr. Executive Engineer cum

Unit Incharge, Kirti Nagar, during the year 1994.

6. On 17.10.1994, the tenders were opened at 3 PM by the Tender Committee headed by the petitioner as Chairman of the Tender Committee in

presence of all the tenderers. The tender of M/s. Acon Construction India Ltd. was found lowest and it''s tendered amount was Rs.1,19,99,560/-.

7. On 18.10.1994, when Sh. Ashok Kapoor, Director of the said Firm contacted the petitioner and enquired about his tender, then he asked him

to meet in the evening at 7 PM in the United Coffee House at Connaught Circus. When they met as per pre-fixed programme, petitioner

demanded illegal gratification @ 8% of the tender amount, out of which he was to pay @2% before award of the contract and 6% during

execution of work from Sh. Ashok Kapoor. Petitioner clearly asked him that if he was interested that the work should be awarded to him, he had

to pay the demanded bribe. Sh. Kapoor was also told that he should pay Rs.20,000/- as token money.

8. On 19.10.1994, Sh. Ashok Kapoor submitted a written complaint to SP CBI, alleging therein the demand of bribe amount of Rs.20,000/- to

be paid to the petitioner for award of the above-said contract. He also requested to SP, CBI for taking legal action against Sh. H.C. Khurana,

Petitioner.

9. During the course of investigation, Sh. S.K. Peshin, DSP, CBI led a trap on 19.10.1994, after completing all the legal formalities in the presence

of the independent witnesses namely, Sh. Ram Kanwar, Sh. Om Prakash and other CBI officials at Unit Office of R.P.N.N Limited, Kirti Nagar,

New Delhi. In presence of shadow witness, Sh. Ram Kanwar, petitioner demanded and accepted a bribe of Rs.20,000/- from Sh. Ashok

Kapoor, complainant and on passing of pre-fixed signal by Sh. Ram Kanwar, appellant was apprehended by Sh. S.K. Peshin, DSP and other trap

team members.

10. In presence of independent witness, the above named DSP after disclosing his identity, challenged the appellant that he had accepted a sum of

Rs.20,000/- as illegal gratification from complainant on which appellant remained silent. The search taken by Sh. Om Prakash and other

independent witnesses led to the recovery of Rs.20,000/- in the form of 200 GC notes in the denomination of Rs.100/- each and on comparison

the numbers of the GC notes tallied with those numbers mentioned in the Annexure A of the handing over memo. The washes of the drawer of the

table of the appellant, the plastic cover, the drawing kept in his briefcase, left hand fingers and right hand fingers were taken separately in the

colourless solution of Sodium Carbonate and the solution turned into pink colour which were preserved in separate bottles and sealed. All the

washes were sent to CFSL for chemical analysis and expert opinion shows positive results.

11. During investigation, other concerned witnesses have been examined and documents were collected which allegedly proved that appellant

demanded and accepted illegal gratification of Rs.20,000/- on 19.10.1994 from Sh. Ashok Kapoor for award of the work of construction of dust

proof air-conditioned Phytotron Building Complex at IARI, Pusa, hence a case u/s 7 & 13(2) read with Section 13(1)(d) of Prevention of

Corruption Act was registered against the appellant and necessary sanction for prosecution also obtained.

12. Vide order dated 26.10.1999, Charges were framed against the appellant for the offences punishable u/s 7 and 13(2) read with Section 13(1)

(d) of the Prevention of Corruption Act, to which he pleaded not guilty and claimed trial.

13. To prove its case, prosecution has examined 7 witnesses in all.

14. Statement u/s 313 Cr.P.C. of petitioner has been recorded to enable him to explain the evidence appearing against him. The appellant

examined one witness Sh. Dinesh Bansal, in his defence.

15. Complainant Ashok Kapoor (PW2) deposed that in October, 1994, he was Director of M/s. Acon Construction India Pvt. Ltd. On

17.10.1994, his company submitted a tender for construction of Phytotron Complex for IARI, in response to the tender notice issued by NPCC,

Govt. of India Enterprise. Vide letter Ex.PW2/A, he requested RPNN Ltd. IARI, Pusa, for issuing tender documents. The tender form Ex.PW2/B

was submitted by his Company for executing the work as desired by RPNN with the tender amount of Rs.1,19,93,590/-. This work was allotted

to him as his tender was lowest. Appellant was the Unit Officer of RPNN Ltd. at that time. In respect of the complaint Ex.PW2/C, he stated that

same bears his signatures at point A, but the language in the complaint was got dictated by Sh. Sharma, DSP, CBI by calling him a few days after

the date of trap. Above named Sh. Sharma told him to give one complaint in writing for which dictation was given by him.

16. As the complainant was not supporting the case of the prosecution, he has been cross-examined by ld. Sr. PP for CBI. The complainant

denied that his statement was recorded by DSP, Sh. C.S. Sharma on 26.10.1994. He also denied that on 18.10.1994, he contacted the appellant

at his residence on phone to know about the fate of his tender and then they decided to meet at 7 PM at United Coffee House, Connaught Place,

New Delhi. He has also denied that during that meeting at the Coffee House, appellant demanded 8% of the tender amount, out of which 2% was

to be paid before award of the contract and remaining 6% during execution of work. He has also denied that due to his contract work going on at

Bareilly, where he has spent huge amount, he showed his inability to pay 2% of the tender amount and therefore, the appellant demanded

Rs.20,000/- token money as bribe. He also denied the suggestion that on 19.10.1994, when he contacted the appellant on phone, he repeated the

demand and also told him that in case of non payment of the bribe, the contract would not be awarded to him. He also denied the suggestion that

as he did not want to pay the bribe, so, he visited the office of CBI on 19.10.1994, and contacted Sh. S.K. Peshin, through Inspector A.K.

Mishra and lodged a complaint for taking legal action against the appellant for demanding Rs.20,000/-. He further denied that complaint

Ex.PW2/C is the same which he lodged with CBI on 19.10.1994, however, he has admitted that the complaint has been written on his letterhead

and bears his signature, but the contents have been denied by him.

17. The complainant has also admitted that he had gone to CBI office without trap money and was directed by Mr. Peshin to bring money i.e.

Rs.20,000/-, if he wanted legal action in the matter. He has admitted that trap money of Rs.20,000/- was brought by him from his house, but

denied that it was withdrawn from the Bank. He also admitted that he brought this money to CBI Office for giving the same to appellant. The

complainant could not recollect about arranging of two independent witnesses by CBI and he being introduced to those witnesses. He also could

not recollect whether the number of GC notes of Rs.20,000/- produced by him before CBI team were recorded in Annexure Ex.PW1/A, but he

has admitted his signature on the Annexure.

18. Complainant (PW2) has, further, admitted that GC notes were treated with powder but denied about the demonstration being given. He has

admitted that powder treated notes were given back to him with direction to give the same to appellant or to any other person on direction or put

the same at some place, where he direct. He has admitted his signatures in pre-trap proceedings memo Ex.PW1/B.

19. It is further deposed that from CBI Office, they proceeded to Kirti Nagar and after reaching there, he went to the Office of appellant. He

denied that Sh. Ram Kanwar was with him as shadow witnesses. He stated that said Ram Kanwar was with Mr. Peshin and he visited the office of

appellant alone. He has also admitted that appellant was not available in his room at that time and he waited for about 10-15 minutes in his office.

When appellant did not turn up he came out and asked someone to call appellant. Thereafter, appellant came and they both entered his office

room again. He has denied the suggestion that shadow witness Ram Kanwar also entered the office of appellant along with him and he introduced

the shadow witness as his Accountant. He also denied the suggestion that in presence of shadow witness, he requested the appellant to reduce the

amount as his standard was lowest, but appellant replied that the demand was reasonable.

20. Complainant Ashok Kapoor (PW2) further deposed that on direction of the appellant, he kept the amount of Rs.20,000/- in the right side

drawer of his table and came out of his office. After coming out of his office, he gave a signal to CBI, who in turn rushed to appellants office and

took possession of Rs.20,000/- lying in the drawer of his table. He denied to the suggestion that while he was giving Rs.20,000/- to appellant, he

told him with gesture to send the shadow witness Sh. Ram Kanwar outside the office room and accordingly, he directed him to go. He has denied

the suggestion that thereafter, he handed over Rs.20,000/- to appellant, who after accepting the same through his left hand and after transferring

the same to his right hand opened the middle drawer of the table through left hand and kept the amount in question in the said drawer. The

complainant has denied the suggestion that signal was given by shadow witness however, he has admitted that on receipt of signal given by him, the

trap team rushed inside the room of the appellant and took the money from the right side drawer of the table of appellant. He also stated that

before making the recovery, Sh. Peshin, disclosed his identity and challenged the appellant that he had taken money, which the appellant denied.

He has denied having informed the trap team about the conversation that took place between him and the appellant or that it was confirmed by

shadow witness Mr. Ram Kanwar. He has also denied that on direction Sh. Om Prakash, the recovery witness had taken search of left side

middle drawer of table and found it empty, it containing the impression of the size of GC notes on the dust particles of that drawer. The

complainant stated that after the recovery of bribe amount from the drawer he came out of the room and the trap team started the post-trap

proceedings.

21. The PW-2 complainant has not supported the case of the prosecution on the aspect of taking washes of the hands of the appellant, table

drawer, polythene, portion of drawing and briefcase. The complainant has admitted his signatures on recovery memo Ex.PW1/C, but stated that

he put the signatures in the CBI Office without going through the contents of this memo. Regarding the GC notes Ex.P1 to P200, this witness has

stated that after seeing the same, he cannot identify, but possibility cannot be ruled out as this can be the same notes. He has admitted Ex.PW2/C

is in his own hand, but denied the suggestion that he had introduced new story to save the appellant that the complaint was dictated later on by

DSP Mr. Sharma. In cross-examination, he has admitted that he took pre-mature retirement and appellant had taken the charge from him. He has

also admitted that he was posted as Superintendent Engineer in RPNN Ltd. and appellant was Senior Executive Engineer. He has also admitted

that he had visiting terms with appellant as they were working in the same organization. He has further admitted that normally 15 days time is

consumed in processing the tender before award of work.

22. PW-2, complainant has not admitted or denied the suggestion that CBI officials made the appellant to count for recovery of GC notes. He

stated that there was no briefcase with appellant or on his table. However, he has admitted the suggestion that when appellant came to his office on

being called by complainant, he was accompanied by 2-3 persons, who remained present there throughout.

23. Shadow Witness Ram Kanwar (PW1) deposed to the effect that on 19.10.1994, Vigilance Department of FCI deputed him for CBI duty and

in response to those directions, he reported to the Trap Officer in CBI Office at around 1 PM. He noticed that Sh. Om Prakash AG-II of his

Department already present there. They were introduced to the complainant, who was also present there. The complaint was read over to them by

CBI Officer. Trap Officer showed them two packets of Rs.100/- denomination each produced by the complainant. Numbers of those GC notes

were recorded on papers (3 sheets) Ex.PW1/A, which he signed at Point A on all the pages. One chemical powder was applied on those GC

notes and demonstration was given to explain the purpose of applying the said powder on the GC notes. One CBI Officer touched the said

powder treated GC notes and dipped his fingers in plain glass of water and on his doing so, the solution turned pink which was thrown away.

24. Thereafter, on completing all the pre-trap formalities, they all left CBI Office at around 3 PM and reached Kirti Nagar at a spot, where some

construction work was going on. After getting down from the vehicles, he and complainant were sent ahead to contact the appellant. The

complainant took him to the Office of appellant located in a tin shed, but he was not present there. Thereafter, complainant called the appellant

through someone and when he arrived there, he took them to his Office where conversation took place between the complainant and appellant

about the transaction of money ""paise ka len den"". He did not remember the exact details of conversation, but recollect that complainant told the

appellant ""yeh paise kuch jyada hain, aap thora kam kariye"" to which he did not give proper reply and said ""job bhi hai yo thik hai"". Thereafter,

complainant told appellant ""main bees hazar rupaiye as token money laya hoon, wo aap le lijiye"". Thereafter some signal was exchanged between

the complainant and the appellant, on which complainant asked him to go out of the room and wait outside in the shedded place. After coming out

of the office of the appellant, he stood in shade near one wall. After some time, complainant came out and told him ""kaam ho gaya"" and on this he

gave signal to the trap party.

25. As PW-1 shadow witness also did not support the case of the prosecution, therefore, he was cross-examined by ld. Sr. PP for CBI. The

witness failed to recollect whether the trap money of Rs.20,000/- was produced by complainant in his presence or whether his statement u/s 161

Cr.P.C. was recorded by DSP Sh. S.L. Sharma. He could not recollect whether demonstration was given in the CBI by applying powder on the

trap money or some water like solution of Sodium Carbonate was prepared. He also could not recollect the time of leaving CBI Office with other

members of raiding party or the discussion, if any, between the complainant and the appellant in his office that the complainant had brought the

token money of Rs.20,000/- as per the discussion held in the Coffee House on 18.10.1994. He did not say if appellant signalled the complainant

with his eyes to send him out. He has denied the suggestion that he stood in front of window of office of appellant and he could see the transaction

through that.

26. However, this witness admitted that wash of both the hands of appellant were taken separately and the solution was turned pink. The said

solutions were transferred in a separate glass bottles and were duly sealed. He admitted his signatures on the cloth wrappers at the labels of the

said bottles. He also admitted that recovered GC notes, bottles of washes, drawer of the table of appellant and his briefcase with its contents were

seized vide recovery memo Ex.PW1/C and appellant was also arrested at the spot. He has identified the GC notes Ex.P-1 to P-200, bottles Ex.P-

201 to P-205, Clothes wrappers Ex.P-206 and P-210, drawer of table Ex.P-211 and briefcase Ex.P-212, file cover Ex.P213 on which BHEL

was printed and the drawing / plan Ex.P-214 to be the same which were seized by CBI.

27. In this cross-examination, this witness stated that the trap team left the CBI Office at 1.30 to 2 PM. The vehicles were stopped at a distance of

about one furlong from the office of the appellant. From his position inner portion of the office of the appellant was not visible. He did not hear the

conversation between the complainant and the appellant. He has admitted the suggestion to be correct that sometime after entering the Office of

the appellant, the complainant came and told him the work has been done. He has further admitted the suggestion to be correct that thereafter he

gave signal to the trap team members, who were standing at some distance from him. He has also stated that he did not know who recovered the

tainted money from the drawer of the table of the appellant and further stated that actually the money was recovered from the briefcase either by

CBI Officer or by Sh. Om Prakash, who was assigned the duty to recover the money. He denied to the suggestion that immediately after

apprehension of the appellant, he was taken away to CBI Office. Washes of drawer etc. were also taken at the spot and appellant was taken to

CBI Office after collecting the washes.

28-overy witness Om Prakash (PW3) deposed that on 19.10.1994, on the direction of Assistant Vigilance Officer, he reached CBI Office and

report to DSP Sh. Peshin. Complainant was already present there and accordingly, he was introduced. Money was lying on the table which was

used for trap.

29. As this witness was not fully supporting the case of prosecution, this witness has also been cross-examined at length by ld. Sr. PP for CBI.

However, the witness could not recollect whether complainant produced Rs.20,000/- to be used for trap money. He has admitted that number of

GC notes were recorded in Ex.PW1/A, which bears his signature. He also admitted that some chemical was applied on GC notes, but could not

recollect whether any demonstration was given or not for explaining the purpose of treating those GC notes with chemical powder. He has

admitted that Inspector A.K. Kapoor touched the GC notes with his left hand fingers and touched his fingers in freshly prepared solution.

30 Further, he has admitted that handing over memo Ex.PW1/B was prepared, which was signed by him. He admitted that the trap team left the

CBI Office and reached the office at Kirti Nagar at 3 PM. Complainant and Sh. Ram Kanwar went inside the office, whereas the remaining

members of the trap had position outside at a distance of about 100 Yds. The witness could not recollect about giving of signal by shadow witness,

but admitted that he along with Sh. S.K. Peshin and other trap members reached the Office of appellant, where he was sitting. He also stated that

he had recovered the notes from the drawer itself. After taking out of the money from the drawer, it was washed in the solution of Sodium

Carbonate and that solution turned pink and that it was transferred into clean bottle and sealed. He signed on the cloth wrapper as well as the

label. He could not recollect about taking washes of the file cover, briefcase, etc. He also could not recollect about taking washes of both hands of

appellant. Regarding recovery of memo, he has stated that it was not prepared at the spot. After seeing the recovery memo Ex.PW1/C, witness

identified his signatures at point C but could not tell when and where he signed the same.

31. During cross-examination by ld. Defence Counsel, he stated that he asked the CBI officials to allow him to read the recovery memo

Ex.PW1/C, but they replied that they do not have much time and there was no need to read it. They just asked him to put his signatures. He has

admitted the suggestion of the ld. Defence Counsel that appellant was asked to count the GC notes before washes of his hands were taken. He

also admitted that he did not tally the numbers of the recovered GC notes. He has admitted the suggestions of ld. Defence Counsel that he has not

recovered from the money from the briefcase.

32. This witness was also re-examined by the prosecution and during his re-examination, witness has stated that his earlier statement before the

court on 17.04.2011 that he along with another panch witness tallied the number of recovered GC notes was correct and what he has stated that

on that day (28.04.2004) was not correct.

33. Sh. N.K. Prasad (PW4), the Chemical Analyst from CFSL deposed that on 27.10.1994, five sealed bottles sealed with the seal of CBI were

received in the Office of CFSL and were bearing Mark-A, B, C, RHW and LHW. The contents of these bottles were got chemically analysed by

him under his supervision and on analysis the contents of all the five bottles gave positive test for phenolphthalein and Sodium Carbonate. He

proved his report Ex.PW2/A.

34. Sh. S.K. Gupta (PW5), Private Secretary deposed that Sh. K.C. Aggarwal, Sanctioning Authority in this Case expired and he was examined

to identify the signature of Sanctioning Authority which he has identified on the sanction order Ex.PW5/A.

35. During cross-examination, he was questioned about the documents which might have been perused by Sanctioning Authority before according

the sanction about which this witness has claimed ignorance. He has stated that he can only identify the signature of Sh. K.C. Aggarwal on the

sanction order and beyond that he cannot say anything.

36. Sh. S.K. Peshin (PW7), Trap Laying Officer has supported the case fully and proved all the recoveries and documents. After completion of

Trap Proceedings further proceedings was entrusted to C.L. Sharma, DSP, who has expired.

37. The statement of appellant was recorded u/s 313 Cr.P.C. wherein he admitted that on 18.10.1994, he was working as Senior Executive

Engineer-cum-Unit Incharge at Kirti Nagar, B-Type, Industrial Sheds in RPNN Ltd.

38. He further stated that regarding submission of tenders by complainant, he has stated that it is a matter of record. In respect of the lodging of

complaint by Sh. Ashok Kapoor in CBI Office alleging demand of money by him, appellant denied that he demanded any money. He has also

stated that he had no knowledge about the pre-trap proceedings. He also denied that when the complainant contacted him along with shadow

witness in his office, the complainant told him that money demanded was too much and he should reduce the demand to which he did not give

proper response and stated that whatever had been demanded was ready. He also denied that when the complainant informed him that he had

brought Rs.20,000/- as token money and he should accept the same, he gave a signal to the complainant to send shadow witness outside and

thereafter shadow witness left and after that he accepted Rs.20,000/- from the complainant kept the same in the drawer of the office table. He

further denied that after the complainant came out of his room, signals were given and the trap team entered his room and challenged him.

39. He also denied that first his table drawer was searched and thereafter tainted money was recovered from his briefcase. Regarding recovery

memo Ex.PW1/C also, he has stated that he did not know about the same. In respect of the CFSL Report and sanction order, he has pleaded

ignorance. Further he has stated that he was innocent and falsely implicated in this case.

40. He further stated that he and the complainant were working in the same Department and he took over the charge from the complainant on

25.02.1994 at PETS Unit of that Department. In the month of June, 1994, a pre-qualification notice was circulated in the leading Newspaper for

the works of Construction of Phytotron Building Complex at Pusa by appellant on behalf of his Department. He has further stated that tender Sh.

Kapoor / complainant was the lowest and he could not have stopped award of works to him as the award of work in question was not in his

power. This fact was also known to the complainant. The complainant has falsely implicated him and he never demanded or accepted any illegal

gratification from the complainant at any time and no bribe money has been recovered from him or at his instance.

41. The appellant produced one defence witness, Sh. Dinesh Bansal as DW1. He stated that on 19.10.1994, he was working as Assistant

Executive Engineer at NPCC Ltd. and posted at Kirti Nagar Project. On 19.10.1994 at about 3 to 4 PM, while he was present at the site along

with the appellant and one Mr. S.S. Bedi, peon came to inform that Mr. Ashok Kapoor / complainant had come to meet the appellant. Since Mr.

Kapoor had been working in NPCC earlier, they all left the site to meet him and found Mr. Kapoor alone sitting in the room of the appellant. He

stated that he was just passing from there and thought it fit to meet the appellant. There was some casual talk and they had tea. After that Mr.

Kapoor made enquiry about his tender and appellant informed him that since his tender was lowest, work would be awarded to him within 8-10

days. It was not in his competency to award the work, same was given to the Head Office. Thereafter, 3-4 persons from CBI came and took out

the money from the drawer of the table. They also enquired from appellant whether he had accepted bribe from Mr. Kapoor, to which he replied

that as the tender of Mr. Kapoor was lowest, there was no reason for him to ask for the money and he has falsely impleaded him in this case.

42. Mr. K.T. S. Tulsi, Sr. Adv. appearing on behalf of the appellant has submitted that PW1 Ram Kanwar (Shadow Witness), PW3 Om Prakash

(Recovery Witness) and PW2 Ashok Kapoor (Complainant) have not supported the case of the prosecution. He further submits that conviction of

the petitioner is solely based on the deposition of PW7 S.P. Peshin (Addl. S.P.), who being the Investigating Officer was interested in the success

of the case.

43. He further submits that essential ingredients of the offence being demand, acceptance and recovery of the amount of illegal gratification are not

satisfied in the instant case. Section 20 of the Prevention of Corruption Act raises a rebuttable presumption where the public servant accepts

gratification other than legal remuneration. Mere recovery of the money from the drawer of the table or briefcase of the accused person is no

conclusive evidence of the offence. It is the duty of the court to separate the grain from the chaff and find out the truth.

44. Ld. Counsel for the petitioner submits that there are material contradictions in the deposition of the material witnesses examined by the

prosecution.

45. Complainant Ashok Kapoor (PW2) during his examination-in-chief deposed that he has seen Ex.PW2/C, which bears his signature at Point A,

but the contents state in the complaint were not as given by him, as the language was dictated by one Mr. Sharma, DSP of CBI and it was got

written from him after the incident. When he was called to the CBI Office, after the gap of few days from the day of trap, Sh. Sharma, told him that

he would give one complaint in the writing for which he gave him dictation.

46. This witness further deposed that CBI officers made him sign on large numbers of papers which he had not read and only put his signatures on

the asking of CBI Officer. Further deposed that PW1 Ram Kanwar was not with him when he had gone to the Office of the appellant. Further

deposed that he had seen recovery memo Ex.PW1/C which bears his signature at point-B on all the pages but he put the signature in the CBI

Office without going through the contents of the recovery memo. He further deposed that it is correct that appellant had not demanded any money

from him and no money was recovered from the possession of the appellant or at his pointing out.

47. Shadow Witness Ram Kanwar (PW1) deposed in his examination in chief that appellant was not in his office when he reached there.

Thereafter, complainant met someone there and through him he called the appellant. During his cross-examination by the ld. PP, this witness denied

the suggestion that from his position he actually saw the transaction of passing money by the Complainant to the appellant.

48. Further deposed that on receipt of signal remaining members of the trap party rushed to the spot where he and complainant were standing.

They enquired from them where the appellant was. On this, complainant told CBI Officers, that appellant was sitting in his office in the tin shed. On

this, the entire trap team rushed into the office of the appellant and he was apprehended by the CBI Officers from his wrists. The trap officer

challenged the appellant was having accepted a bribe of Rs.20,000/- from the complainant. On this the appellant protested that they had not taken

any bribe. Further deposed that on receiving the direction from the Trap Officer, Om Prakash (Panch witness) started to search the tainted money.

He first searched the drawer of the table of the appellant, but the money was not found there. One briefcase was lying in the office of the appellant,

he then searched the said briefcase and from there the tainted money Rs.20,000/- was recovered.

49. During cross-examination by ld. Defence Counsel, this witness deposed that from his position, inner portion of the office of appellant was not

visible. He has not heard the conversation, which took place between the complainant and the appellant. He deposed that he did not recover the

tainted money. He did not remember who recovered the tainted money from the briefcase. This witness neither denied nor admitted the suggestion

that GC notes were not recovered from the briefcase of the appellant.

50. Mr. Tulsi, Ld. Counsel for the appellant submitted that evidence of the shadow witness is of higher credibility, as it is the duty of the shadow

witness to observe the whole incident and depose to the same effect.

51. Ld. Counsel further submitted that PW3 Recovery witness also declared as hostile by the prosecution. There are material contradictions in the

testimony of this witness as well.

52. PW3, during his cross-examination by ld. PP for CBI stated that he did not remember, whether Ram Kumar came outside the room of the

appellant or not. He had not seen Ram Kumar giving any signal. This witness further deposed that he had not seen any briefcase lying on the rack.

No recovery memo was prepared at the spot after the trap.

53. During his cross-examination by the ld. Defence Counsel, this witness deposed that he had requested the CBI that he would be allowed to

read the recovery memo Ex.PW1/C, but the CBI Officers had told that they did not have much of time and there was no need for reading it. They

just told him to put his signatures. He was not allowed by the CBI Officials to read Ex.PW1/C. He did not know as to when Ex.PW1/C or

Ex.PW3/A prepared and by whom. This witness admitted that appellant was asked to count the tainted GC notes before his hand washes were

taken. Appellant was protesting and shouting on being caught by the CBI that why he was being caught and what was his fault. This witness further

deposed that he had not recovered any bribe money from the briefcase of the appellant. In fact, there was no briefcase.

54. PW7/IO of the case during his cross-examination by ld. Defence Counsel denied the suggestion that GC notes were in the drawer. He

admitted that Page 2 of Ex.PW1/A is in different Ink & different handwriting than the rest of the pages. Due to paucity of time 2 officers were

asked to write down the numbers of GC notes. This witness further admitted that Ex.PW3/A, Ex.PW1/C and Ex.PW1/B are not in his

handwriting. Labels on hand washes were not got signed from the appellant. This witness neither denied nor admitted whether the complainant has

put the money in the drawer of the appellant in his absence as he was not present at that time.

55. Mr. Tulsi, learned Senior Advocate, submitted that the CBI Inspectors, who had caught hold of the appellant, being J.S. Emamual and the Mr.

A.K. Kapoor, were not produced as witnesses by the prosecution for the reasons best known to them.

56. Ld. Counsel for the appellant further submits that the prosecution has failed to prove essential ingredients of the offence being demand,

acceptance and recovery of the amount of illegal gratification as there are material contradictions which are as under:-..

ON DEMAND

It is alleged in the FIR that the appellant called the complainant at United Coffee House and there he demanded 8% of the tender amount as bribe.

Out of which Rs.20,000/- were to be paid as advance.

However, Complainant PW2 during his cross-examination by ld. PP denied the suggestion that appellant demanded bribe from him and 2%

amount of the tender amount comes to Rs.2,40,000/- while 8% of the tender amount comes to Rs.9,60,000/-.

ON ACCEPTANCE

It is the case of the prosecution as alleged in the charge sheet, money was taken by the appellant from his left hand and then transferred it to the

right hand and with the left hand the appellant opened the drawer and kept the money there. However, as per the recovery memo, no money was

recovered by the recovery witness from the drawer of the table of the appellant, and there was an impression of dust particles about the size of the

notes.

Shadow Witness (PW1) in his deposition has stated that the

appellant was not present in his office when the complainant along

with him reached his Office. Complainant (PW2) also deposed the

same facts and stated that he called the appellant through someone.

The said person is neither named nor produced as a witness by the

prosecution.

ON RECOVERY

There is no dispute with regard to the recovery of money. As per PW1 / shadow witness & PW7/IO of the case, money was recovered from the

brief case of the petitioner, whereas as per the deposition of PW2 / Complainant and PW3/Recovery Witness money was recovered from the

drawer.

57. Ld. Counsel for appellant submits that on the score of the recovery of money the conviction of the appellant is liable to be set aside and he is

entitled to be acquitted from all the charges.

58. He further submitted that Section 20 of the Prevention of Corruption Act raises a rebuttable presumption that where the public servant accepts

gratification other than legal remuneration, mere recovery of the money from the appellant is no conclusive evidence of the offence.

59. To strengthen his arguments, ld. Counsel for the appellant has relied upon Banarsi Dass Vs. State of Haryana, wherein it is held as under:-

In the case of M.K. Harshan Vs. State of Kerala, this Court in somewhat similar circumstances, where the tainted money was kept in the drawer

of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under:

....It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery,

two aspects are important. Firstly, there must be a demand and secondly there must be acceptance in the sense that the accused has obtained the

illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very

important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there

must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal

gratification. Unfortunately, on this aspect in the present case we have no other evidence except that of PW-1. Since PW-1"s evidence suffers

from infirmities, we sought to find some corroboration but in vain. There is no other witness or any other circumstance which supports the evidence

of PW-1 that this tainted money as a bribe was put in the drawer, as directed by the accused. Unless we are satisfied on this aspect, it is difficult to

hold that the accused tacitly accepted the illegal gratification or obtained the same within the meaning of Section 5(1)(d) of the Act, particularly

when the version of the accused appears to be probable.

13. Reliance on behalf of the appellant was placed upon the judgment of this Court in the case of C.M. Girish Babu (supra) where in the facts of

the case the Court took the view that mere recovery of money from the accused by itself is not enough in absence of substantive evidence for

demand and acceptance. The Court held that there was no voluntary acceptance of the money knowing it to be a bribe and giving advantage to the

accused of the evidence on record, the Court in para 18 and 20 of the judgment held as under:

17. In Suraj Mal Vs. State (Delhi Administration), this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted money divorced

from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The

mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe

or to show that the accused voluntarily accepted the money knowing it to be bribe.

18. A three-Judge Bench in M. Narsinga Rao v. State of A.P. 2001 (1) SCC 691 : SCC (Cri) 258 while dealing with the contention that it is not

enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty

to prove that what was paid amounted to gratification, observed: (SCC p. 700, para 24)

24....we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at

length. (Vide Madhukar Bhaskarrao Joshi Vs. State of Maharashtra, .The following statement made by us in the said decision would be the

answer to the aforesaid contention raised by the learned Counsel: (Madhukar case, SCC p. 577, para 12)

`12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said

premise is established the inference to be drawn is that the said gratification was accepted ""as motive or reward"" for doing or forbearing to do any

official act. So the word ""gratification"" need not be stretched to mean reward because reward is the outcome of the presumption which the court

has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two

expressions adjacent to each other like ""gratification or any valuable thing"". If acceptance of any valuable thing can help to draw the presumption

that it was accepted as motive or reward for doing or forbearing to do an official act, the word ""gratification"" must be treated in the context to

mean any payment for giving satisfaction to the public servant who received it.

13. In fact, the above principle is no way derivative but is a reiteration of the principle enunciated by this Court in Suraj Mal case (supra), where

the Court had held that mere recovery by itself cannot prove the charge of prosecution against the accused in the absence of any evidence to prove

payment of bribe or to show that the accused voluntarily accepted the money. Reference can also be made to the judgment of this Court in Sita

Ram Vs. The State of Rajasthan, , where similar view was taken.

14. The case of C.M. Girish Babu (supra) was registered under the Prevention of Corruption Act, 1988, Section 7 of which is in pari materia with

Section 5 of the Prevention of Corruption Act, 1947. Section 20 of the 1988 Act raises a rebuttable presumption where the public servant accepts

gratification other than legal remuneration, which presumption is absent in the 1947 Act. Despite this, the Court followed the principle that mere

recovery of tainted money divorced from the circumstances under which it is paid would not be sufficient to convict the accused despite

presumption and, in fact, acquitted the accused in that case.

60. In case of State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede, it is held as under:-

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 burden 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.

17. Indisputably, the complainant took with him two panch witnesses. One of them Ashok Waghade was a witness in respect of the alleged

demand of illegal gratification on the part of the respondent. He having died during pendency of the matter before the learned Special Judge, no

other independent witness was available to prove the prosecution case in that behalf. The second panch witness was not a witness of demand.

Despite the said fact, the prosecution sought to prove the demand purported to have made by the respondent through him. It is of some

significance to notice that although by the said process PW-1 did not support the accused, he was declared hostile and permission to cross-

examine him was sought for by the prosecution.

61. In Suraj Mal Vs. State (Delhi Administration), it is held as under:-

The defence of the appellant was that he was falsely implicated and nothing was recovered from him nor did he make any demand for bribe. The

Special Judge on the basis of the evidence led before the Court held that the evidence was extremely shaky and unconvincing and was not

sufficient to convict Ram Narain but nevertheless the trial court convicted the appellant on that very evidence. In upholding the conviction of the

appellant the High Court completely overlooked the fact that the very evidence on which the conviction of the appellant was based had been

rejected with respect to the same transaction and thus if one integral part of the story given by witnesses was not believable, then the entire case

failed. In other words, the Position was that while P.Ws. 6,8 and 9 were disbelieved both in regard to the factum of payment of the bribe and the

recovery of the money. Regarding Ram Narain, the very same witnesses were believed so far as the appellant was concerned. It is well-settled that

where witnesses make two inconsistent statements in their evidence either at one state or at two stages, the testimony of such witnesses becomes

unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses.

For these reasons, therefore, when the Special Judge disbelieved the evidence of P Ws. 6 8 and 9 in regard to the complicity of Ram Narain, It

was not open to him to have convicted the appellant on the same evidence with respect to the appellant, which suffered from same infirmities for

which the said evidence was disbelieved regarding the complicity of Ram Narain. If the witnesses drew no distinction in the examination in chief

regarding acceptance of bribe by Ram Narain and by the appellant and the witnesses were to be disbelieved with respect to one, they could cot be

believed with respect to the other. In other words, the evidence of witnesses against Ram Narain and the appellant was inseparable and indivisible.

Moreover, there is an additional circumstance which throws a serious doubt on the complicity of the appellant Suraj Mai, Although, in his

statement of page 71 of the paper-book, the complaisant has clearly stated that all the three accused including the appellant had met him and

demanded bribe of Rs. 2000/, the appellant having demanded Rs. 100/-, yet in the report which he lodged before Mr. Katoch, there is no mention

of the fact that the appellant at any time demanded any tribe at all. Even the presence of the appellant at the time when the demand was made by

Devender Singh has not been mentioned, in this document. This report, undoubtedly contains reference to a demand having been made by the

Section H.O. Devender Singh on behalf of the appellant, but there is no statement in this report that any demand was made by Suraj Mal directly

from the complainant. If, in fact, the appellant would have demanded bribe from the complainant just on the previous evening, it is not

understandable why this fact was not mentioned in the report which the complainant submitted to the D.S P. Katoch and which is the F.I R.

constituting the evidence. We have perused the statements of P.W. 6, 8 and 9 and we find that while in the examination in chief they have tried to

implicate all the three accused persons equally without any distinction in their cross examination, they have tried to save Ram Narain and made out

a different story so far as Ram Narain is concerned and have even gone to the extent of stating that he did not demand any money and that he

refused to accept the money which was offered to him. In this state of the evidence, we feel that the High Court was not right in convicting the

appellant. Mr. Lalit appearing for the State vehemently submitted that whatever be the nature of the evidence in the case, it is an established fact

that money had been recovered from the bushirt of the appellant and that by itself is sufficient for the conviction of the accused. In our opinion,

mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive

evidence in the case is not reliable. Moreover, the appellant in his statement u/s 342 has denied the recovery of the mosey and has stated that he

had been falsely implicated. The High Court was wrong in holding that the appellant had admitted either the payment of money or recovery of the

same as this fact is specifically denied by the appellant in his statement u/s 342 Cr. PC Thus mere recovery by itself cannot prove the charge of the

prosecution against the appellant, in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the

money. For these reasons, therefore, we are satisfied that the prosecution has not been able to prove the case against the appellant beyond

reasonable doubt. We, therefore, allow the appeal set aside the conviction and sentences passed against the appellant. The appellant will now be

discharged from his bail bonds.

62. In Smt. Meena Hemke Vs. The State of Maharashtra, , it has been held as under:-

We have bestowed our careful thought to the submissions made on either side, in the light of the evidence on record. We are of the view that

neither the quality of the materials produced nor their proper evaluation could, in this case, be held sufficient to convince or satisfy the judicial

conscience of any adjudicating Authority to record a verdict of guilt, on such slender evidence. Indisputably, the currency note in question was not

recovered from the person or from the table drawer, but when the trap party arrived was found only on the pad on the table and seized from that

place only. The question is as to whether the appellant accepted it and placed it on the table or that the currency note fell on the pad on the table in

the process of the appellant refusing to receive the same by pushing away the hands of PW-1 and the currency, when attempted to be thrust into

her hands. PW-2, one of the panch witnesses, who accompanied PW-1, as a shadow witness, when he tried to give the bribe, did not support the

prosecution case. He has been treated hostile and his evidence eschewed from consideration by the courts below. The lady Constable, Victoria,

another shadow witness, who first arrived on the spot after the signal was given by PW-1, was not examined at the trial. Law has always favoured

the presence and importance of a shadow witness in the trap party, not only to facilitate such witness to see but also overhear what happens and

how it happens also. In this case, the role of Victoria was to enter first and hold the hands of the accused immediately after the acceptance of the

bribe amount and she was stated to have done that, as planned. For reasons best known, such a vital and important witness has been withheld by

the prosecution, from being examined. Jagdish Bokade, who scribed the application dated 13.8.1986 for getting copies and who admittedly was

all alongwith PW-1 and gave even the idea of lodging a complaint with the Anti-Corruption Bureau, has also been withheld from being examined.

The other person, who was present at the place of occurrence though cited initially as witness, was not examined by the prosecution but later was

got examined as DW-1 and evidence of this person completely belies the prosecution story. The corroboration essential in a case like this for what

actually transpired at the time of the alleged occurrence and acceptance of bribe is very much wanting in this case. Even the other panch witness,

PW-5, categorically admitted that even as the Inspector of Police, PW-6, arrived, the appellant gave the same version that PW-1 tried to force

into her hands the currency note which she turned down by pushing it away, and his evidence also does not lend credibility to the case of the

prosecution. The contradictory version of PW-1 of the very incident when earlier examined in departmental proceedings renders his testimony in

this case untrustworthy. PW-3, the Head Copyist, seems to be the brain behind all these and that PW-1 as well as Jagdish Bokade appear to be

working as a group in this affair and despite the blunt denial by PW-3, his closeness to PW-1 and Jagdish Bokade stand well substantiated. All

these relevant aspects of the case seem to have been completely overlooked by the courts below

63. In case of Prem Raj Meena Vs. CBI 2011 (1) Crimes 730, it has been held as under:

15. Now the crucial question which needs determination in this appeal is whether or not the prosecution has been able to establish either the

demand or acceptance of illegal gratification by the appellant? The material witnesses to prove demand and acceptance are PW1 Puran Chand

Nirala (complainant) and PW3 Surender Kumar Singh, shadow witness. Both of them have turned hostile and they have not supported the

prosecution story regarding demand or acceptance of bribe by the appellant at the time of trap proceedings. PW1 Puran Chand Nirala

(complainant) has stated that on reaching the office of the appellant along with the trap team, he along with PW3 Surender Kumar Singh went to

the office of the appellant P.R. Meena, but Surender Kumar Singh was not allowed to enter the office. He also stated that P.R. Meena was busy

on telephone and he gestured him to sit. Thereafter, he kept the amount of.1,100/- in the brief case of P.R. Meena lying by the side of his chair.

After that, he came out of the room and gave signal to the trap team. He also stated that before coming out of the room, he shook hand with the

appellant. In the cross-examination, he denied the suggestion of learned APP that the appellant himself kept the money in the brief case after

accepting bribe from him. He also denied the suggestion that the appellant P.R. Meena asked him as to how much money he has brought to which

he answered that he had brought ` 1,100/- and thereafter on his demand, he handed over the tainted money to the appellant who accepted it and

kept it in his brief case. PW3 Surender Kumar Singh in his examination-in-chief stated that at the time of the transaction, he was in the adjacent

room with a dark glass partition through which he could see the shadows of the persons sitting in the room of the appellant. He stated that the

contractor Puran Chand Nirala after having some talks with the appellant came out of the room after shaking hands with him and he gave signal to

the trap team. In the cross-examination, this witness denied that from his position in the adjacent room, he could hear the conversation between the

complainant and the appellant or see the transaction also. He denied the suggestion that he heard the appellant asking the complainant whether he

has brought the money and the complainant responded by asking that he had brought `.1,100/- as demanded. Thereafter, the appellant extended

his right hand with which he accepted the tainted money and kept it in his brief case. The aforesaid testimony of PW1 and PW3, in my view, is

grossly insufficient to prove either the demand of illegal gratification or acceptance of the same. As regards the testimony of the Investigating

Officer, admittedly he was not present at the time of transaction. Therefore, his testimony is of no help to the CBI for the reason that he had

reached at the spot only after the completion of transaction. The money admittedly was recovered from the brief case and according to the

complainant, he had kept that money in the brief case without any demand from the appellant. Thus, it cannot be said with conviction that the

money reached in the brief case at the instance of the appellant, as such it cannot be said that the appellant obtained or accepted the tainted money

from the complainant.

16. Learned counsel for the CBI has contended that, in any case, PW1 Puran Chand Nirala has stated in his testimony that he himself had gone to

the CBI office to lodge the complaint and the complaint Crl.A. No.963/2008 Page 12 of 16 Ex.PW1/A was written in his hand. He has also

stated that the contents of the complaint are correct. From this, learned prosecutor has urged this court to infer that prosecution has been able to

establish the initial demand.

17. I am not impressed with the argument for the reason that according to PW1 Puran Chand Nirala, his bill was pending clearance in the office of

PWD. On the relevant day, he had approached the appellant for settling his bill and in the PWD office he met one person from the department,

who advised him to pay commission to the appellant and only thereafter the bill would be settled. Therefore, on the next day, he went to the CBI

office and lodged the complaint. If this version is true, then initial demand was not made by the appellant, but the complainant was advised by

someone else to pay commission to the appellant. Therefore, it is not surprising that in his complaint Ex.PW1/A, the complainant had made

allegation of initial demand against the appellant. It is pertinent to note that in the examination-in- chief, Puran Chand NIrala(PW1) has also stated

that he had written the complaint in the CBI office on the advice and asking of CBI officials. Therefore, slight distortion of facts to make specific

allegation against the appellant is a unique possibility. Otherwise also, complaint Ex.PW1/A is the FIR which set the investigating machinery into

motion. It is well settled that the FIR is not a substantive piece of evidence and it can only be used for corroborating or contradicting the testimony

of its makers. Therefore, in absence of substantive evidence of demand or acceptance of bribe by the appellant, the contents of the FIR cannot be

substituted as proof for demand and acceptance of illegal gratification. In my aforesaid view I find support from the judgments of the Supreme

Court in the matter of Baldev Singh Vs. State of Punjab, and State of Gujarat Vs. Anirudh singhh and another,

18. Learned prosecutor further submitted that from the testimony of complainant Puran Chand Nirala(PW1), PW3 Surender Kumar Singh and the

IO PW8 Inspector Om Prakash, it is established that the tainted money was recovered from the brief case lying in the office of the appellant.

Learned prosecutor contended since the brief case was lying in exclusive office of the appellant, it can be safely inferred that it belonged to him.

Thus, recovery of the tainted money from the brief case of the appellant is sufficient proof of acceptance and demand of tainted money by the

appellant.

20. Lastly, it is argued by learned prosecutor that it has come in evidence that after apprehending the appellant, sodium carbonate solution in water

was prepared and the appellant was made to dip his right hand fingers in the said solution and his hand wash turned pink. From this, it is apparent

that the appellant had handled tainted money, resulting in presence of phenolphthalein on his fingers. This circumstance, according to learned

prosecutor conclusively establishes the acceptance of illegal gratification by the appellant.

21. I do not find any merit in this contention for the reason that complainant Puran Chand Nirala in his testimony has stated that before leaving the

office of the appellant, he shook hands with the appellant. PW3 Surender Kumar Singh has also deposed to this effect. According to PW1, he

took out tainted money from his pocket and placed it in the brief case, meaning thereby that in place of P.R. Meena, he had handled the

phenolphthalein treated currency notes. Therefore, a possibility cannot be ruled out that when he shook hands with the appellant, some of the

phenolphthalein which had stuck to his fingers Crl.A. No.963/2008 Page 15 of 16 got transferred to the fingers of the appellant and this explains

as to why the hand wash of the appellant turned pink. Thus, under the circumstances, it is not safe to conclude acceptance of the tainted money by

the appellant only on the strength of his hand wash turning pink.

64. Similar view has been taken in Sunil Kumar Sharma Vs. State (CBI), .

65. On the other hand, Ms. Sonia Mathur, Ld. Counsel for CBI argued that demand of illegal gratification by the appellant stands established from

the testimony of the complainant as he went to the CBI Office, lodged a complaint and participated in the trap proceedings. If the tender of the

complainant was lowest and he was bound to get the tender then what prompted him to approach CBI and provide the trap money and also in

view the fact that there is no allegation of any kind of enmity between the appellant and the complainant.

66. She further submitted, demand of illegal gratification stands proved from the testimony of shadow witness (PW1), who specifically stated that

there was conversation between complainant and appellant about the demand and bargain on account of bribe amount.

67. She further submitted that complaint of illegal gratification made by the complainant not to be doubted considering the inconvenience and the

harassment which would generally followed. As it is only in extreme cases, where a citizen has a strong feeling of having been wronged or where he

is so much conscious of his rights that instead of keeping silent or paying money that he wants a bribe seeker to be punished that he takes the

courage to make a complaint.

68. this aspect, she relied upon cases of Ram Chander vs. State (Govt. of NCT of Delhi) (2009) Crilj 4058, Madan Lal vs. State of NCTD Crl.

A. 67/2005. She further relied upon the case of B.Noha vs. State of Kerala and Ors. (2006) 12 SCC 277, wherein it is held as under:-

The evidence shows that when PW-1 told the accused that he had brought the money as directed by the accused, the accused asked PW-1 to

take cut and give the same to him. 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. It was held by this Court in Madhukar Bhaskarrao Joshi Vs. State of Maharashtra, as follows:

The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said

premise is established the inference to be drawn is that the said gratification was accepted ''as motive or reward'' for doing or forbearing to do any

official act. So the word ''gratification'' need not be stretched to mean reward because reward is the outcome of the presumption which the court

has to draw on the factual premises that there was payment of gratification. This will again be fortified by looking at the collocation of two

expressions adjacent to each other like "gratification or any valuable thing". If acceptance of any valuable thing can help to draw the presumption

that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the context to

mean any payment for giving satisfaction to the public servant who received it.

This decision was followed by this Court in M. Narsinga Rao Vs. State of Andhra Pradesh, . There is no case of the accused that the said amount

was received by him as the amount which he was legally entitled to receive or collect from PW-1. It was held in the decision in State of A.P. v.

Kommaraju Gopala Krishna Murthy (2000 (9) SCC 752), that when amount is found to have been passed to the public servant the burden is on

public servant to establish that it was not by way of illegal gratification. That burden was not discharged by the accused"".

69. On the point of acceptance and recovery of money, ld. Counsel for CBI submits that appellant demanded the money from the complainant by

gesticulation on which complainant handed over the money to the appellant, which was subsequently recovered from the briefcase of the appellant.

70. The fact that when the complainant and shadow witness met the appellant at his office, some signal was exchanged between the appellant and

the complainant and the shadow witness was asked to go out of the room raises strong suspicion on the appellant that he did not want to accept

the money in presence of any outsider.

71. The fact that other persons were also present at the time of trap in the office of the appellant is false, as the complainant and the shadow

witness has nowhere stated this fact in their examination in chief and the statement made by the complainant during his cross-examination. The fact

that the name of one Sh. D.K. Bansal is reflected in the recovery memo shows that he was not present at the spot till the recovery was affected.

Had the Trap Laying Officer wanted the presence of Sh. D.K. Bansal to be concealed, he would not have mentioned his name on the recovery

memo as well.

72. Ld. Counsel for the respondent further submitted that though there are contradictions in the statement of complainant and the Panch witness as

to whether the money was recovered from the drawer of the table or from the briefcase of the appellant, the fact of recovery of money has been

proved by the complainant, shadow witness, recovery witness and the TLO.

73. She further submitted that on the direction of the appellant, complainant kept the money in the drawer of the table and came out to give signal

to the trap team. It was the appellant, who could have transferred the GC notes from the drawer of the table to his briefcase after the complainant

left. Even the wash of the hand of the appellant, drawer and briefcase as well as the file cover, gave positive result of the presence of

phenolphthalein Power, which has been proved by all the material witnesses.

74. It is submitted, when the tainted money recovered from the briefcase of the appellant tallied with the number of the GC notes mentioned in the

handing over memo, it stands tallied as is evident from the testimony of PW1 Shadow Witness, PW3 Recovery witness, PW2 Complainant and

PW7 Trap Laying Officer.

75. Ld. Counsel further submits that once it is established that the tainted money has been recovered from the possession of appellant, it raises

presumption u/s 20 (1) of Prevention of Corruption Act that the said illegal gratification was accepted as motive or reward for doing or forbearing

to do an official Act.

76. On this aspect, Ld. Counsel for the respondent has relied upon Madhukar Bhaskar Rao Joshi vs. State of Maharashtra (2000) 8 SCC 571

wherein it is held as under:-

Learned counsel next contended that the legal presumption envisaged in Section 4 of the Act of 1947 can be drawn only on establishing that

gratification was paid to or accepted by the public servant and not merely that he was found in possession of the currency notes smeared with

phenolphthalein. True the word gratification is not defined in the Act of 1947. (In the successor enactment, the Act of 1988, the same word is

explained as not restricted to pecuniary gratification or to gratification estimable in money vide Explanation (b) to Section 7 of the Act of 1988).

In Blacks Law Dictionary, gratification is defined as a recompense or reward for services or benefits given voluntarily without solicitation or

promise. But in Oxford Advanced Learners Dictionary of Current English the said word is given the meaning to give pleasure or satisfaction to.

Among the above two descriptions for the word gratification with slightly differing nuances as between the two, what is more appropriate for the

context has to be found out. The context in which the word is used in Section 4(1) of the Act of 1947 is, hence, important. As the wording on the

relevant portion employed in the corresponding provision in the PC Act of 1988 {Section 20(1)} is identical we would reproduce that sub-section

herein:

20 (1) Where, in any trial of an offence punishable u/s 7 or section 11 or clause (a) or clause (b) of sub- section (1) of section 13 it is proved that

an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification

(other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or

obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is

mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate

77. In T. Shankar Prasad Vs. State of Andhra Pradesh (2004) 3 SCC 753 it is held as under:-

For appreciating rival stands it would be proper to quote Section 4(1) of the Act, which reads as follows:

4.(1) Presumption where public servant accepts gratification other than legal remuneration.-(1) Where in any trial or an offence punishable u/s 161

or Section 165 of the IPC or of an offence referred to in clause (a) or clause (b) of sub-section (1) of Section 5 of this Act punishable under sub-

section (2) thereof, it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for

any other person any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is

proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a

motive or reward such as is mentioned in the said Section 161, or, as the case may be, without consideration or for a consideration which he

knows to be inadequate.

Before proceeding further, we may point out that the expressions ""may presume"" and ""shall presume"" are defined in Section 4 of the Indian

Evidence Act, 1872 (in short the "Evidence Act"). The presumptions falling under the former category are compendiously known as ""factual

presumptions"" or ""discretionary presumptions"" and those falling under the latter as ""legal presumptions"" or ""compulsory presumptions"". When the

expression ""shall be presumed"" is employed in Section 4(1) of the Act, it must have the same import of compulsion.

When the sub-section deals with legal presumption, it is to be understood as in terrorem i.e. in tone of a command that it has to be presumed that

the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the

former part of the section is satisfied. The only condition for drawing such a legal presumption u/s 4 is that during trial it should be proved that the

accused has accepted or agreed to accept any gratification. The Section does not say that the said condition should be satisfied through direct

evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of

the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act. (See M. Narsinga Rao v. State of

A.P. (2001 (1) SCC 691).

Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a

prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in Hawkins v. Powells Tillery Steam Coal Co. Ltd. (1911 (1)

KB 988) observed as follows:

Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a

reasonable man to come to a particular conclusion"".

For the purpose of reaching one conclusion the Court can rely on a factual presumption. Unless the presumption is disproved or dispelled or

rebutted the Court can treat the presumption as tantamounting to proof. However, as a caution of prudence we have to observe that it may be

unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. This Court has indicated so in

Suresh Budharmal Kalani v. State of Maharashtra (1998 (7) SCC 337)

A presumption can be drawn only from facts _ and not from other presumptions _ by a process of probable and logical reasoning"".

The fact that PW-1 did not stick to his statement made during investigation does not totally obliterate his evidence. Even in criminal prosecution

when a witness is cross-examined and contradicted with the leave of Court by the party calling him, his evidence cannot as a matter of law be

treated as washed off record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross examination and

contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the

process the credit of the witness has not been completely shaken he may after reading and considering the evidence of the said witness, accept in

the light of other evidence on record that part of his testimony which he found to be creditworthy and act upon it. As noted above, PW-1 did not

totally resile from his earlier statement. There was only a half-hearted attempt to partially shield A-2. PW-1 has categorically stated that he had

paid the money to A-2 as directed by A-1. As noted above, the plea of A-2 that he had accepted the money as advance tax has been rightly

discarded being contrary to official records. Evidence of PW-2 with regard to proceedings on 28.4.1992 has been clearly established. Evidence of

PW-4 the mediator is corroborated by the evidence of PWs 1, 3, 7 and 8. His report was marked as Ext P.13. The same along with the other

evidence clearly establish the accusations against both the accused. When money was recovered from the pocket of one of the accused persons a

presumption u/s 7 of the Act is obligatory. It is a presumption of law and cast an obligation on Court to operate it in every case brought in Section

7. The presumption is a rebuttable presumption and it is by proof and not by explanation which may seem to be plausible. The evidence of PWs 4,

5, 7 and 8 read with the evidence of PW-1 established recovery of money from A-2. A belated and stale explanation was offered by A-2 that the

money was paid towards tax. This plea was rightly discarded as there was no tax due and on the contrary the complainant was entitled to some

refund. An overall consideration of the materials sufficiently substantiate, in the case on hand the prevalence of a system and methodology cleverly

adopted by the accused that the demand will be specified when both the accused were present and thereafter as and when the A-1 puts his

signature the party has to meet A-2, at his seat for fixing the seal and making entry in the Register to make the process complete only after

collecting the amount already specified by A-1 in A-2''s presence. The involvement of both of them in a well planned and cleverly managed device

to systematically collect money stood sufficiently established on the evidence let in by prosecution. Further A-2 did not offer his explanation

immediately after the recovery of money. A similar plea of receiving money as advance tax was rejected and affirmed by this Court in A. Abdul

Kaffar v. State of Kerala (2003 (8) Supreme 804). It was noted that such a stand was not taken at the first available opportunity, and the defence

was not genuine. In State of U.P. v. Dr. G.K.Ghosh (AIR 1984 SC 1453) it was observed that in case of an offence of demanding and accepting

illegal gratification, depending on the circumstances of the case, the Court may feel safe in accepting the prosecution version on the basis of the oral

evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. When besides such

evidence, there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no

difficulty in upholding the conviction"".

78. In N. Rarasinga Rao vs. State of AP (2001) 1 SCC 691 it is held as under:-

Before proceeding further, we may point out that the expressions may presume and shall presume are defined in Section 4 of the Evidence Act.

The presumptions falling under the former category are compendiously known as factual presumptions or discretionary presumptions and those

falling under the latter as legal presumptions or compulsory presumptions. When the expression shall be presumed is employed in Section 20(1) of

the Act it must have the same import of compulsion.

When the sub-section deals with legal presumption it is to be understood as in terrorem i.e. in tone of a command that it has to be presumed that

the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the

former part of the section is satisfied. The only condition for drawing such a legal presumption u/s 20 is that during trial it should be proved that the

accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct

evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of

the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act.

The word proof need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of

evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or consider its existence so

probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition

given for the word proved in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the

supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the

supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in Hawkins vs. Powells Tillery Steam

Coal Company, Ltd. [1911 (1) K.B. 988] observed like this:

Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a

reasonable man to come to a particular conclusion"".

From those proved facts the court can legitimately draw a presumption that appellant received or accepted the said currency notes on his own

volition. Of course, the said presumption is not an inviolable one, as the appellant could rebut it either through cross-examination of the witnesses

cited against him or by adducing reliable evidence. But if the appellant fails to disprove the presumption the same would stick and then it can be

held by the court that the prosecution has proved that appellant received the said a mount.

In Raghubir Singh Vs. State of Haryana, V.R. Krishna Iyer, J, speaking for a three Judge Bench, observed that the very fact of an Assistant

Station Master being in possession of the marked currency notes against an allegation that he demanded and received that amount is res ipsa

loquitur. In this context the decision of a two Judge Bench of this Court (R.S. Sarkaria and O. Chinnappa Reddy, JJ) in Hazari Lal Vs. State

(Delhi Administration), can usefully be referred to. A police constable was convicted u/s 5(2) of the Prevention of Corruption Act, 1947, on the

allegation that he demanded and received Rs.60/- from one Sriram who was examined as PW-3 in that case. In the trial court PW-3 resiled from

his previous statement and was declared hostile by the prosecution. The official witnesses including PW-8 have spoken to the prosecution version.

The court found that phenolphthalein smeared currency notes were recovered from the pocket of the police constable. A contention was raised in

the said case that in the absence of direct evidence to show that the police constable demanded or accepted bribery no presumption u/s 4 of the

Act of 1947 could be drawn merely on the strength of recovery of the marked currency notes from the said police constable. Dealing with the said

contention Chinnappa Reddy, J. (who spoke for the two Judge Bench) observed as follows:

It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events

which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW3. u/s 114

of the Evidence Act the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common

course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to

Section 114 of the Evidence Act is that the court may presume that a person who is in possession of the stolen goods soon after the theft, is either

the chief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the f acts and circumstances of

the present case the court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had

obtained them from PW3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the

accused had obtained the money from PW3, the presumption u/s 4(1) of the Prevention of Corruption Act is immediately attracted. The

presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The accused was, therefore, rightly

convicted by the courts below.

The aforesaid observation is in consonance with the line of approach which we have adopted now. We may say with great respect to the learned

Judges of the two Judge Bench that the legal principle on this aspect has been correctly propounded therein.

Regarding the second limb of the contention advanced by Shri Nageshwar Rao, learned counsel for the appellant (that it was not gratification

which the appellant has received) we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said

aspect has been dealt with at length. [Vide Madhukar Bhaskarrao Joshi vs. State of Maharashtra, JT 2000 (supple.2) SC 458]. The following

statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned counsel:

The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said

premise is established the inference to be drawn is that the said gratification was accepted as motive or reward for doing or forbearing to do any

official act. So the word gratification need not be stretched to mean reward because reward is the outcome of the presumption which the court has

to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions

adjacent to each other like gratification or any valuable thing. If acceptance of any valuable thing can help to draw the presumption that it was

accepted as motive or reward for the official act, the word gratification must be treated in the context to mean any payment for giving satisfaction

to the public servant who received it.

79. On the point of Hostile witness, ld. Counsel for the respondent submits that though the complainant and witnesses have turned hostile, it would

not be sufficient to discard the prosecution case in its entirety and she has relied upon Jodhraj Singh vs. State of Rajasthan (2007) Crl. L.J. 2942

(SC) and Gura Singh vs. State of Rajasthan (2001) Crl. L.J. 487 (SC).

80. Ld. Counsel further submitted that the Trap Laying Officer (PW7) in his testimony fully corroborates the case of the prosecution. That the

TLO statement can be acted upon even without corroboration and she has relied upon the case of State of UP vs. Zakaullah (1998) 1 SCC 557,

wherein it is held as under:-

The most important evidence is that of PW-4 - Harendra Singh Sirohi, the Superintendent of Police who arranged the trap. We must mind the fact

that he had no interest against the respondent. But the verve shown by him to bring his trap to a success is no ground to think that he had any

animosity against the delinquent officer. He made arrangements to smear the phenolphtalein powder on the currency notes in order to satisfy

himself that the public servant had in fact received the bribe and not that currency notes were just thrust into the pocket of an unwilling officer. Such

a test in conducted for his conscientious satisfaction that he was proceeding against a real bribe taker and that an officer with integrity is not

harassed unnecessarily.

The evidence of such a witness as PW4 can be acted on even without the help of any corroboration (vide Prakash Chand vs. State (Delhi

Administration): 1979 (2) SCR 330; hazari Lal vs. Delhi Administration: 1980 (2) SCR 1053)"".

81. To sum up, ld. Counsel for the respondent has relied upon the observations made by the ld. Trial Court in its impugned judgment, while

convicting the appellant.

82. I Have heard learned counsel appearing on behalf of the parties.

83. It is emerged from the statement made by learned counsels, the demand of illegal gratification by the appellant stands established from the

testimony of the applicant as he went to the CBI office, lodged a complaint and participated in the pre and post trap proceedings. If the tender of

the appellant was lowest and he was bound to get the tender, then what prompted him to approach CBI and provided the trap money. Also in

view of the fact that there is no allegation of any kind of enmity between the appellant and the complainant. PW-1- Shadow Witness also

specifically stated that there was conversation between the complainant and the appellant about the demand and bargain on account of bribe

amount. Therefore, the complaint of the illegal gratification made by the complainant cannot be doubted. In the extreme cases, where a citizen has

a strong feeling of having being wronged or where he is so much conscious of his rights that instead of keeping silent or paying money that he wants

a bribe seeker to be punished that he takes the courage to make a complaint.

84. It is also emerged from the evidence on record that the appellant demanded the money from the complainant by gesticulation on which

complainant handed over the money to the appellant, which was subsequently recovered from the briefcase of the appellant. When, the

complainant and shadow witness met the appellant at his office, some signal was exchanged between the appellant and the complainant and the

shadow witness was asked to go out of the room, raises strong suspicion on the appellant that he did not want to accept the money in the presence

of any outsider. The complainant and the shadow witness as well, has no where stated the fact in their examination-in-chief and the statement made

by the complainant during his cross-examination. The other persons were also present at the time of trap in the office of the appellant. The name of

one Shri D K Bansal is reflected in the recovery memo shows that he was not present at the spot till the recovery was affected. Had the Trap

Laying Officer wanted the presence of Shri D K Bansal to be concealed, he would not have mentioned his name on the recovery memo as well.

85. Though, the learned counsel for the respondent has pointed out some contradictions in the statement of complainant and the Panch witness as

to whether the money was recovered from the drawer of the table or from the briefcase of the appellant, the fact remains the recovery of money

has been proved by the complainant, shadow witness, recovery witness and the TLO.

86. On the direction of the appellant, complainant kept the money in drawer of the table and came out to give signal to the trap team. It was the

appellant, none else who could have transferred the GC notes from the drawer of the table to his briefcase after the complainant left the place of

occurrence. Even, the hand wash of the appellant, drawer and briefcase as well as the file cover, gave positive result of the presence of

phenolphthalein power, which has been proved by all the material witnesses.

87. More so, the tender money recovered from the brief case of the appellant tallied with the number of the GC notes mentioned in the handing

over by PW-1 Shadow Witness, Recovery witness, PW-2 Complainant and PW-7 trap laying Officer.

88. The tainted money has been recovered from the possession of appellant, it raises presumption u/s 20(1) of the Prevention of Corruption Act

that the said illegal gratification was accepted as motive or reward for doing or forbearing to do an official act, unless the contrary is proved.

89. The appellant has admitted his presence at the place of occurrence. Also admitted the complainant and other officers from CBI came over

there and he was caught in his office itself.

90. The recovery witness, OM Prakash PW-3, on re-examination by the prosecution, stated on 17th April, 2011 that he along with other Panch

Witness tallied the number of recovered GC notes was correct and what he had stated on 28th April, 2004 was not correct.

91. This Court is also conscious of the statement of the complainant - Ashok Kapoor PW-2. He was called to the CBI Officer and the contents of

the complaint were dictated by one Mr. Sharma, DSP, CBI and he only put his signatures on a large number of papers which he did not read and

only put his signatures on the asking of CBI Officer. He further deposed that PW1 - Ram Kanwar was not with him when he had gone to the

office of the appellant. Further deposed that he had seen recovery memo ex PW-1/C which bears his signatures at point "B" on all the pages, but

he put the signatures in the CBI office without going through the contents of the recovery memo. He also stated that appellant had not demand any

money from him and no money was recovered from the possession of the appellant or at his pointing out.

92. But the fact remains, he supported the case of prosecution in Chief Examination along with aforementioned witnesses. Therefore, it proves that

the aforesaid witness may have won by the appellant, thereafter.

93. In these circumstances, it is for the Judge to consider the fact in each case whether as a result of such cross-examination and contradictions,

the witness stand thoroughly discredited or still can be believed in regard to a part of his testimony. If the Judge finds that in the process the credit

of the witness has not been completely shaken, he may after reading and considering the evidence of the said witness, accept in the light of other

evidence on record that part of his testimony which he found to be creditworthy and act upon it. In a case of an offence of demanding and

accepting illegal gratifications, depending on the circumstances of the case. The Court may feel safe in accepting the prosecution version on the

basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent.

When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence,

there should be no difficulty in upholding the conviction.

94. What is required, the production of such material on which the court can reasonably act to reach the supposition that a fact exists. Proof of the

fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting

in any important matter concerning him.

95. Once, the Court arrived at the finding that the accused had obtained the money, the presumption u/s 4(1) of the Prevention of Corruption Act

is attracted. The presumption is of course rebuttable. But, in the present case, there is no such material available to rebut the prosecution.

96. The CBI Officer had not acted on their own, but complainant approached them. He arranged the money of Rs. 20,000/-.He joined the trap

proceedings and reached the office of the appellant at around 3-00 p.m.at Kirti Nagar, where some construction work was going on. After getting

down from the vehicles, he called the appellant through someone and when he arrived there, he took him to his office where conversation took

place between him and the appellant about the transaction of money ""Paise ka len den"".

97. The complainant told the appellant that ""Yeh paise kuch jyada ain, aap thora kam kariye"". He did not give proper reply and said, ""job bhi hai

yo thik hai"" Thereafter, complainant told the appellant, ""main bees hazar rupaiye as token money laya hoon, wo aap le lijiye

98. After handing over the money to the appellant, complainant came down and told the Shadow Witness that ""Kam ho gaya"" and on this, the

Shadow Witness gave signal to the trap party.

99. Moreover, the report of phenolphthalein powder on hand washing, drawer and brief case is positive. Therefore, I find no discrepancy in the

judgment dated 25th November, 2004 whereby he was held guilty and order of sentence dated 29th December, 2004, vide which he has been

sentenced. I concur with the same.

100. The instant appeal is dismissed, accordingly. No order as to cost.