HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

SINGLE BENCH : HON'BLE SHRI JUSTICE S.C. SHARMA

Criminal Appeal No.1004/2010

R. S. Ashatkar

Versus

Central Bureau of Investigation, Bhopal

Shri Surendra Singh, learned Senior Counsel with Shri Ashish Gupta, learned counsel for the appellant.

Shri D. S. Chawla with Shri Deepak Rawal, learned counsel for the respondent.

O R D E R

(Delivered on this **15th day of March, 2018**)

The present criminal appeal is arising out of judgment dated 11/08/2010 passed in Special Case No.02/2009 convicting the appellant under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and he has been sentenced to undergo one year and two years rigorous imprisonment respectively and to pay fine of Rs.3,000/- on each count and in default of payment of fine to further under go three months rigorous imprisonment respectively (totaling to six months).

02- The facts of the case reveal that the complainant Kunj Bihari Patel and his brother Bal Krishna were the permanent residence of Village Bhamar, Tehsil Kannod, District Dewas and they were owner of agricultural land. The agricultural land came under

submergence / was acquired for a project known as “Indira Sagar Project” and a dam has been constructed over the river Narmada. The house as well as land of the family was acquired and compensation to the tune of Rs.9,44,139/- was assessed for the house and for the land a sum of Rs.1,25,862/- was assessed.

03- As per prosecution case both the brother Kunj Bihari and Bal Krishna were to be paid compensation and Bal Krishna met the present appellant on 05/07/2008 and the appellant in turn has demanded a sum of Rs.40,000/- for making the payment of compensation to the land owners / complainant. Kunj Bihari lodged a report on 14/07/2008 with the Superintendent of Police and Central Bureau of Investigation and on the next date i.e. on 15/07/2008 a telephonic conversation took place between the Kunj Bihari and the accused in front of witnesses.

04- A *Panchnama* was prepared accordingly and CR was registered at CR No.9A/08. The Central Bureau of Investigation constituted a trap team including Atul Hajela, D. S. Sengar, Mukesh Tiwari (all Inspector), Arjun Kadam and Zaheer Ansari (both Sub Inspector) as well as other employees. A pre-trap drill was carried out and Kunj Bihari and Bal Krishna were present and they were given Rs.20,000/- which were coated with phenolphthalein powder. A trap memo was prepared and numbers of currency notes were noted

down.

05- Kunj Bihari, Bal Krishna and H. R. Chavhan were sent to the room of appellant and other witnesses were waiting for a signal to be given by Kunj Bihar and Bal Krishna. Inside the room, there was a table and two chairs and Kunj Bihari handed over Rs.20,000/- to the appellant. The appellant received the money and kept the money in the drawer and at that point of time signal was given by H. R. Chavhan and the entire team came inside. The Central Bureau of Investigation team recovered an amount of Rs.20,000/- from the drawer. The hands of the appellant were washed with the water and the water containing sodium carbonate turned pink. Samples were collected from the drawer and a *Panchnama* was prepared. Thereafter, a charge sheet was filed, charges were framed and the trial Court based upon the evidence adduced during the trial has convicted the appellant.

06- Learned senior counsel Shri Surendra Singh along with Shri Ashish Gupta has vehemently argued before this Court that as per the statutory provisions governing the field as contained under the Delhi Special Police Establishment Act, 1946, the Central Bureau of Investigation was not having jurisdiction in respect of investigation of the crime in question as no consent was in existence to exercise powers and jurisdiction in a State of Madhya Pradesh. As the issue

relating to jurisdiction has been argued at the initial stage, the same requires an answer at the threshold.

07- Delhi Special Police Establishment Act, 1946 is an Act which empowers Central Bureau of Investigation to investigate the offences which the Central Government by notification specify in the official gazette. The Government of India in exercise of power conferred under Section 3 of the Delhi Special Police Establishment Act, 1946 has issued a notification on 07/09/1989 including the offences under Indian Penal Code, 1860 at item 'A' and at item 'B(34)' the Prevention of Corruption Act, 1988 (Act No.49 of 1988) is included in the aforesaid notification, meaning thereby, the Central Bureau of Investigation was competent to investigate offences under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

08- It has been argued by learned senior counsel that there is no notification issued under Section 6 of Delhi Special Police Establishment Act, 1946. Section 6 of Act of 1946 reads as under:-

> **"Consent of State Government to exercise of powers and jurisdiction. —** Nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or Railway, area, without the consent of the Government of that State.**"**

09- The State Government in exercise of power conferred under Section 6 of the Delhi Special Police Establishment Act, 1946

has issued a notification dated 12/10/2012 and the same reads as under:-

> "F-21-282-2012-B-1-Two.–In super session of all previous notifications and letters issued by the Government of Madhya Pradesh in this behalf and in pursuance of Section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946) the State Government, hereby, gives its consent to the extension of the powers and jurisdiction of the Mambers of the Delhi Special Police Establishment in the whole of the State of Madhya Pradesh for investigation of the offences committed by the employees of Central Government, Central Public Undertakings and persons connected with the affairs of the Central government (excluding officers of the Indian Administrative Service, Indian Police Service and Indian Forest Service borne on Madhya Pradesh cadre serving under the Government of Madhya Pradesh at the time of Commission of the alleged offences of their investigation) in respect of the following offences, namely:-
>
> (a) offences under the prevention of corruption Act, 1988 (No.49 of 1988)
>
> (b) attempts, abetments and conspiracies in respect of any one or more of the above mentioned offences and any other offence or offences Committed during similar transaction arising out of similar facts.
>
> 2. This notification shall come into force with immediate effect."

Meaning thereby, consent of the State Government has been notified way back in the year 2012 and therefore, the argument canvassed by learned senior counsel have got no substance in it.

10- This Court has carefully gone through the entire evidence on record. The appellant was serving as a Land Acquisition Officer and was certainly responsible for assessing the quantum of compensation and even distribution was to be done on the basis of the award delivered by him.

11- Kunj Bihari (PW-1) in his statement has stated categorically that plot was in the name of his brother Bal Krishna and there was an award passed in their favour and when he contacted the appellant, he was told by the appellant that until and unless he pays a sum of Rs.40,000/- he will not receive compensation. Ex.-P/2 is a consent memo given by Bal Krishna in favour of Kunj Bihari for receiving the compensation which was given by Kunj Bihari in the office of Land Acquisition Officer.

12- The statement of Kunj Bihari (PW-1) also establishes that compensation was assessed in respect of house as well as in respect of the land and Kunj Bihari has received compensation in respect of the house and compensation in respect of land was to be paid, for which a demand of bribe was made by the present appellant.

13- Satya Prakash (PW-5) in his statement in paragraph No.11, who was under the present appellant, has categorically stated that a demand was prepared based upon the instructions of Land Acquisition Officer and the demand prepared is also on record as Ex.-P/25 which relates to Kunj Bihari only. He has also stated that demand (Ex.-P/26) was also prepared at the instructions of Land Acquisition Officer, meaning thereby, his statement reflects that it is only after an award is passed and instructions are given to

subordinates, a demand note is prepared.

14- Kunj Bihari (PW-1) has also categorically stated that while receiving first installment no bribe was paid and while receiving the second installment, he was compelled to pay bribe to receive the cheque by the appellant. Kunj Bihar has given statement in his deposition stating categorically that he never wanted to give bribe and therefore, he lodged a written complaint with the Central Bureau of Investigation on 14/07/2008.

15- Subhash Pandey (PW-6) an officer of Central Bureau of Investigation has given statement before the trial Court that on 14/07/2008 he has received a complaint which was verified on 15/07/2008 and a CR was registered by Central Bureau of Investigation at No.9A/2008. Kunj Bihari has also stated before the trial Court that telephonic communication, which took place between him and the appellant, was recorded and the transcript is on record as Ex.-P/3 bearing their signatures. The aforesaid statement has been supported by Tapan Kumar Das (PW-2) and H. R. Chavhan (PW-4) has also signed the transcript.

16- Subhash Pandey inquired PW-6, the person who has constituted a team including independent witnesses and the team was comprising of Atul Hajela, D. S. Sengar, Mukesh Tiwari and two independent witnesses H. R. Chavhan and Tapan Kumar Das. As per

the statement of Subhash Pandey, a demonstration was made before the team. Money was handed over to Kunj Bihari which was coated with phenolphthalein powder and one of the witness during the demonstration was told to receive the currency notes and his hands were washed with the sodium carbonate solution and the solution turned pink. Thereafter, the the solution was destroyed and hands of all the members were washed with soap and money was kept in *Kurta* of Kunj Bihari Patel and again his hands were washed.

17- Pre-trap memo (Ex.-P/4) was prepared and the entire sequence of events find place in the statement of Kunj Bihar (PW-1) as well as Subhash Pandey (PW-6). The independent witnesses and other witnesses including Tapan Kumar Das (PW-2), Atul Hajela (PW-7) and H. R. Chavhan (PW-4) have admitted the signatures in respect of Ex.-P/4. Kunj Bihari (PW-1) in his statement has categorically stated that he went inside the chamber of the appellant and handed over the money to the appellant / accused and after receiving the money, he kept the money after counting it in a drawer and at that point of time the other witnesses were informed by touching the head and the entire trap party came inside. Money was recovered from the drawer and thereafter, the hands of the appellant were washed with the sodium carbonate solution and it turned pink.

18- The witnesses have categorically stated about the

incident to be more specific by H. R. Chavhan (PW-4) and Subhash Pandey (PW-6) and a *Japti Panchnama* was prepared. So far as transcript of the conversation of appellant with Kunj Bihari is concerned, a CD was prepared and a *Panchnama* (Ex.-P/8) was prepared which is proved by Tapan Kumar Das and H. R. Chavhan and on 19/07/2008 prepared a memorandum (Ex.-P/9) of the recording of the voice of appellant, which has been duly supported by witnesses H. R. Chavhan (PW-4) and Tapan Kumar Das (PW-2).

19- The voice sample was kept in sealed cover and was sent for FSL examination. There is a report given by Forensic Science Laboratory in respect of voice sample and the voice in the conversation and voice in respect of samples are of the same person. Not only this, the call details record was also produced in the matter and Ex.-P/1 is a report in respect of call details of the appellant and the complainant Kunj Bihari. Ex.-P/1 is a report and call details are Ex.-P/31.

20- In the present case, it is vehemently argued by learned senior counsel that tape recorder was not produced inside the court room and therefore, in light of the judgment delivered by the apex Court in the case of **Nilesh Dinkar Paradkar Vs. State of Maharashtra** reported in **2011(4) SCC 143**, as per paragraph 32 the transcript could not have been used against the appellant.

21- In the considered opinion of this Court, there is clinching evidence available against the present appellant. In fact demand of bribe in light of the statement of Kunj Bihari has been established and the factum of receiving bribe by the appellant has also been established. The fact that it was the appellant who was responsible in the matter of passing an award and issuing directions for preparation of distribution memo is not in dispute and therefore, once the offer and acceptance is proved in respect of bribe, even if tape recorder was not produced during the trial. It does not give any benefit to the appellant.

22- Resultantly, in light of other clinching evidence the accused is not entitled for any benefit of what so kind. In the present case, the Central Bureau of Investigation was able to prove the case beyond reasonable doubt. The demand of bribe was made by the present appellant and the acceptance of money by the present appellant is also proved. The money was recovered from him (from drawer of his office). The fact that he has received money was also established and therefore, in light of Section 20 of the Prevention of Corruption Act, 1988, the question of setting aside the judgment does not arise.

23- The apex Court has dealt with interpretation of Section 20 on the basis of which legal presumption can be drawn. In the case

of **N. Sunkanna Vs. State of Andhra Pradesh** reported in **(2016) 1 SCC 713**, it has been held that unless there is proof of demand of illegal gratification, proof of acceptance will not be followed. Their Lordships has dealt with Section 20 of the Prevention of Corruption Act, 1988 in depth in paragraph No.5 of the aforesaid judgment and the same reads as under:-

> **"**5. The prosecution examined the other fair price shop dealers in Kurnool as PWs 3, 4 and 6 to prove that the accused was receiving monthly mamools from them. PWs 4 and 6 did not state so and they were declared hostile. PW-3 though in the examination-in-chief stated so, in the cross-examination turned round and stated that the accused never asked any monthly mamool and he did not pay Rs.50/- at any time. The prosecution has not examined any other witness present at the time when the money was demanded by the accused and also when the money was allegedly handed-over to the accused by the complainant. The complainant himself had disowned his complaint and has turned hostile and there is no other evidence to prove that the accused had made any demand. In short there is no proof of the demand allegedly made by the accused. The only other material available is the recovery of the tainted currency notes from the possession of the accused. The possession is also admitted by the accused. It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine-qua-non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1)(d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reference may be made to the two decisions of three-Judge Bench of this Court in B. Jayaraj vs. State of Andhra Pradesh [(2014) 13 SCC 55] and P. Satyanarayna Murthy vs. The District Inspector of Police and another [(2015 (9) SCALE 724].**"**

In light of the aforesaid judgment, in the present case the demand has been established. The acceptance of money has also been established and therefore, in light of Section 20 of the

Prevention of Corruption Act, 1988 the conviction cannot be set aside.

24- In the case of **C. Chandrasekaraiah Vs. State of Karnataka** reported in **(2015) 13 SCC 802**, the Hon'ble Supreme Court in paragraphs No.9 to 11 has held as under:-

> **"**9. We have considered the rival submissions and have gone through the record. The signature of surety Sidharaju was obtained in the Bail Bond Register on 1.12.2005 but that of PW-3 complainant was not allowed to be taken. Such signature was taken only after the exchange of money as stated by PW-3 and PW-1. Moreover, no entry was made in the Station Diary Ext. P- 5 as stated by PW-6 Investigating Officer as well as PW-5 Basavraju. The Trial Court was therefore not justified in concluding that everything stood completed on 1.12.2005 itself. We have also scanned the evidence of the relevant witnesses and found the following:-
>
> (i) Though there is variation in their version as regards the actual words uttered by the appellant, both PWs 1 and 3 are consistent that such demand was made,
>
> (ii) Both are again consistent that money was made over by PW-3 complainant which was received in right hand by the appellant,
>
> (iii) That the money was kept by the appellant in the hip pocket of the trouser,
>
> (iv) That thereafter the Bail Bond Register was placed by the appellant in front of PW-3 complainant,
>
> (v) That thereafter the complainant signed in the Bail Bond Register,
>
> (vi) that thereafter they came out of the Police Station,
>
> (vii) And the requisite signal was given by them,
>
> (viii) That they again entered the Police Station along with raiding party.
>
> (ix) And that the right hand of the appellant upon being dipped in the solution turned pink, whereas his left hand did not.
>
> As regards these facets of the matter, there is complete consistency between PW-1 Umashankar and PW-3 complainant and as regards other features of the matter i.e. after the raiding party had entered the Police Station, they also stand corroborated by the other witnesses.
>
> 10. The immediate explanation offered by the appellant was that the money was thrust into his pocket but this was given up and the appellant remained silent. In the absence of any evidence offered by the appellant to explain the circumstances, the presumption under Section

> 20 of the Act was not in any way rebutted and the prosecution case stood completely established.
>
> 11. The High Court was conscious that it was considering the appeal against acquittal but it was justified in interfering in the matter and reversing the acquittal. We find no infirmity in the view taken by the High Court. The appeal thus being devoid of merit is dismissed. We are alive to the fact that the appellant has medical condition, but since he has been given the minimum sentence, no variation is permissible. We, therefore, dismiss the appeal and direct the appellant to surrender immediately to undergo the sentence awarded to him.**"**

In the aforesaid case, the Hon'ble Supreme Court has held that in absence of any evidence offered by appellant to explain the circumstances, presumption under Section 20 of the Act of 1988 was not in any way rebutted. In the present case also, in absence of explanation offered by the present appellant keeping in view Section 20 of the Act of 1988, the question of setting aside the conviction does not arise.

25- The Hon'ble Supreme Court in the case of **Chaitanya Prakash Audichya Vs. Central Bureau of Investigation** reported in **(2015) 7 SCC 720** has considered the statutory provisions as contained under Section 20 of the Act of 1988. Paragraphs No.13 to 18 of the aforesaid judgment reads as under:-

> **"**13. We have gone through the record and considered the relevant material. The fact that PW1 was awarded contracts by ONGC and that it was a mandatory requirement to have the requisite licence from the office of the Assistant Labour Commissioner is well established. Further the fact that PW1 preferred applications Exts.31 and 32 for necessary licences is also established on record. According to PW3 the applications were registered on 13.05.2003 and that the applications were in order. Furthermore, according to this witness such applications would normally be dealt with in 2-3 days and that the applications were kept pending because of the instructions of the appellant himself. Though a feeble attempt was made to submit that there were interpolations in the applications, the assertion that the applications were complete and kept pending because of instructions of the appellant

could not be controverted. We, therefore, accept that the applications were complete in all respects and as stated by PW3 they were kept pending because of the instructions of the appellant. It is also part of the record that the site in question was inspected by the appellant on 29.05.2003 as the inspection notes Ext.33 would disclose. The assertion on part of PW1 that he had an occasion to meet the appellant that day is well supported. Though it was denied that any meeting had taken place in the Rest House where demand was made as alleged, the facts as they stand unfolded, fully substantiate the assertion made by PW1.

14. Complaint Ext.34 preferred on 30.05.2003 itself disclosed that the money was demanded and that the complainant was asked to make the payment by 30.05.2003 itself. Given the assertions in the complaint, the submission that no preliminary investigation could be undertaken because of paucity of time is well founded. At the same time the incongruity in the timing when services of panch witnesses were sought for also pales into insignificance. It is true that the complaint did not state or suggest any time and place at which the complainant was supposed to fulfill the demand. Though in P. Parasurami Reddy v. State of Andhra Pradesh (supra) there are certain observations that there was no prior commitment fixing the time and place for receiving the bribe, the decision discloses that there were various other circumstances which weighed with this Court. In any case, the facts in the present case show otherwise.

15. It was asserted by the complainant in his examination that he was asked by the appellant to see him at his residence after the office hours. Further, when PW1 and PW2 went to the house of the appellant, the conversation which PW1 had with wife of the appellant clearly shows that the visit of PW1 was quite expected. On this issue there was no effective cross examination at all. It would therefore be inconsequential if no prior commitment regarding fixing of the time and place for receiving the bribe was mentioned in the complaint.

16. In the present case the versions of PW1 and PW2 are completely consistent establishing the basic ingredients of demand and acceptance. The tainted currency notes were found on the person of the appellant. The explanation give by him soon after the incident through his letter dated 10.06.2003 is completely different from the theory put forth while the appellant examined himself as DW2. In our view, the demand and acceptance thus not only stand fully established but the presumption invocable under Section 20 of the Act also stood unrebutted.

17. The other two cases cited by the appellant dealt with situations where the demand and acceptance were not fully established and despite that an attempt was made to rely on the presumption invocable under Section 20 of the Act. Such is not the case in the present matter. It is further well established that where misconduct is proved, the alleged enmity between the complainant and the delinquent officer is immaterial. (See B. Hanumantha Rao v. State of A.P. 1993 Supp (1) SCC 323).

18. In the circumstances we are not persuaded to take a view different from the one which weighed with the courts below. Affirming the decisions taken by the High Court and the trial court, we dismiss the present appeal. The bail bonds stand cancelled and the appellant shall be taken in custody forthwith to undergo the sentence awarded to him.**"**

In light of the aforesaid judgment and also keeping in view the testimonies of the complainant and the panch witnesses which were completely consistent and the phenolphthalein test proved positive and the presumption invocable under Section 20 is also not rebutted, the conviction of the appellant is confirmed.

26- In the case of **Gurjant Singh Vs. State of Punjab** reported in **(2018) 8 SCC 650**, the apex Court in paragraphs No.10 to 14 has held as under:-

> **"**10. On going through the evidence on record, we find that PW-1 Harpal Singh, complainant, has proved the demand of rupees one lakh, made by the appellant, for accepting and approving the advance rice to be supplied by the Shellers. He has further proved that after some talks the appellant agreed to accept Rs.50,000/-. He has given detailed narration of the facts as to how the matter was complained to the Vigilance Department and trap was laid, and as to how the hundred tainted currency notes of denomination of Rs.500/- were accepted by the appellant, on which the Vigilance team caught the appellant red handed, and recovered the amount from him. The statement of PW-1 Harpal Singh is fully corroborated by PW-2 Sandip Kataria and PW-3 Jetha Ram, District Welfare Officer.
>
> 11. PW-11, Baldev Singh Dhaliwal, Deputy Superintendent of Police, Vigilance Bureau, Faridkot, has also narrated the entire operation. He has proved the complaint made by PW-1, and the First Information Report (Ext.PA/2), registered as directed by Baljinder Singh Grewal, Superintendent of Police. He further proved sanction (Ext. PM) for prosecution of appellant, and also proved the report (Ext. PP) from Forensic Science Laboratory, received on completion of investigation.
>
> 12. We have also gone through the statements of defence witnesses. But considering quality of evidence of prosecution witnesses, we are of the opinion that amount of Rs.50,000/- cannot be planted, and the defence version pleading innocence cannot be accepted in the facts and circumstances of this case. The statements of defence witnesses are of little help to discredit the testimony of the prosecution witnesses. As such, keeping in mind the presumption to be taken under Section 20 of the Prevention of Corruption Act, 1988, we are not inclined to interfere with the conviction recorded by the trial court under Section 7/13(2) of the Act, and affirmed by the High Court. We think it proper to mention here few decisions of this Court, which reflect what approach should be adopted in such matters.
>
> 13. In Narendra Champaklal Trivedi v. State of Gujarat[1], this Court, in almost similar facts, has observed as under: -

> "22. In the case at hand, the money was recovered from the pockets of the appellant-accused. A presumption under Section 20 of the Act becomes obligatory. It is a presumption of law and casts an obligation on the court to apply it in every case brought under Section 7 of the Act. The said presumption is a rebuttable one. In the present case, the explanation offered by the appellant-accused has not been accepted and rightly so. There is no evidence on the base of which it can be said that the presumption has been rebutted."

14. In Mukut Bihari and Another v. State of Rajasthan[2], referring to various cases, this Court has made following observations: -

> "13. This Court in C. Sharma v. State of A.P. [(2010) 15 SCC 1], after considering various judgments of this Court including Panalal Damodar Rathi v. State of Maharashtra [(1979) 4 SCC 526] and Meena Balwant Hemke v. State of Maharashtra [(2000) 5 SCC 21] held that acceptance of the submission of the accused that the complainant's version required corroboration in all circumstances, in abstract would encourage the bribe taker to receive illegal gratification in privacy and then insist for corroboration in case of the prosecution. Law cannot countenance such situation. Thus, it is not necessary that the evidence of a reliable witness is necessary to be corroborated by another witness, as such evidence stands corroborated from the other material on record……."

In light of the aforesaid judgment as the demand has been established, the money has been accepted by the appellant and the presumption under Section 20 has not been rebutted, the question of acquitting the appellant does not arise.

27- In the case of **Vinod Kumar Vs. State of Punjab** reported in **(2015) 3 SCC 220**, the apex Court in paragraphs No.46 to 56 has held as under:-

> **"**46. Presently, we shall refer to the evidence of PW6, a clerk in the office of Tehsildar, Rajpura. He has deposed that on 25.1.1995, on the day of the raid, he joined the police party headed by Narinder Pal Kaushal, DSP, on the instruction of Tehsildar. He was introduced to Baj Singh, the complainant and Jagdish Verma, a shadow witness. Thereafter, the complainant and the shadow witness, Jagdish Verma, were sent to the octroi post and he stopped at some distance along with Narinder Pal Kaushal who was waiting for signal and on receiving signal

they went inside the octroi post. As per his testimony Narinder Pal Kaushal introduced himself as DSP and thereafter a glass of water was procured and sodium was added to it. Both the hands of the accused were dipped in the glass of water and the water turned pink. On search of the accused Rs.500/- in the denomination of Rs.100/- were recovered. The numbers tallied with the numbers mentioned in the memo, Ex. PE. The notes were taken into possession vide Ex. PH. As is manifest that the said witness has supported the story of the prosecution in toto.

47. The submission of Mr. Jain is that he is merely a witness to recovery and solely on the basis of recovery no conviction can be recorded. There can be no quarrel over the proposition that on the basis of mere recovery an accused cannot be found guilty. It is the settled principle of law that mere recovery of the tainted money is not sufficient to record a conviction unless there is evidence that bribe had been demanded or money was paid voluntarily as bribe. In the absence of any evidence of demand and acceptance of the amount as illegal gratification, recovery would not alone be a ground to convict the accused. This has been so held in ***T. Subramanian v. The State of Tamil Nadu (2006) 1 SCC 401, Madhukar Bhaskarrao Joshi v. State of Maharashtra (2000) 8 SCC 571, Raj Rajendra Singh Seth v. State of Jharkhand and Anr. (2008) 11 SCC 681, State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede (2009) 3 SCC 779, C.M. Girish Babu v. C.B.I., Cochin (2009) 3 SCC 779, K. S. Panduranga v. State of Karnataka (2013) 3 SCC 721*** and ***Satvir Singh v. State of Delhi (2014) 13 SCC 143.***

48. The fact remains that PW6 has supported the recovery in entirety. He has stood firm and remained unshaken in the cross-examination and nothing has been elicited to dislodge his testimony. His evidence has to be appreciated regard being had to what has been deposed by Jagdish Verma, PW7. In examination-in-chief he has deposed that he had met the DSP, Narinder Pal Kaushal who had introduced him to Sher Singh, PW6. He has further stated that he and PW5, Baj Singh, went inside the octroi post where Vinod Kumar demanded bribe from Baj Singh whereupon Baj Singh gave Rs.500/- to him, and at that juncture, he gave the signal to the vigilance party to come inside where after and they came and apprehended the accused.

49. Apart from stating about the demand and acceptance he had also stated that the hands of the accused were dipped in that water and the colour of the water had turned light pink. It was transferred into a quarter bottle and was sealed and was taken into possession vide recovery memo Ex.PG which was attested by him and Baj Singh. The amount of Rs.500/- was recovered from right side pant pocket of the accused. After making the arrangement for the pant of the accused, the right side pocket of the pant of the accused was dipped in the mixture of water and sodium and its colour turned light pink. It was also transferred into a quarter bottle which was duly sealed and was taken into possession vide recovery memo Ex.PJ. The pant was also taken into possession vide recovery memo Ex.PJ. The notes recovered from the accused were compared with the numbers mentioned in the memo and those tallied. The notes were taken into possession vide recovery memo Ex.PF. A sum of Rs.310/- was recovered from the further search

of the accused which was taken into possession vide recovery memo Ex.PK.

50. Thus, from the aforesaid testimony it is absolutely clear that he has supported in entirety about the demand, acceptance and recovery of money. 51. It is necessary, though painful, to note that PW7 was examined-in-chief on 30.9.1999 and was cross-examined on 25.5.2001, almost after 1 year and 8 months. The delay in said cross-examination, as we have stated earlier had given enough time for prevarication due to many a reason. A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever it was deferred and the cross-examination took place after 20 months. The witness had all the time in the world to be gained over. We have already opined that he was declared hostile and re-examined.

52. It is settled in law that the testimony of a hostile witness can be relied upon by the prosecution as well as the defence. In re-examination by the public prosecutor this witness has accepted about the correctness of his statement in the court on 13.9.1999. He has also accepted that he had not made any complaint to the Presiding Officer of the Court in writing or verbally that the Inspector was threatening him to make a false statement in the Court. It has also been accepted by him that he had given the statement in the Court on account of fear of false implication by the Inspector. He has agreed to have signed his statement dated 13.9.99 after going through and admitting it to be correct. It has come in the reexamination that he had not stated in his statement dated 13.9.99 in the Court that recovery of tainted money was not effected in his presence from the accused or that he had been told by the Inspector that amount has been recovered from the accused. He had also not stated in his said statement that the accused and witnesses were taken to the Tehsil and it was there that he had signed all the memos.

53. Reading the evidence in entirety, his evidence cannot be brushed aside. The delay in cross-examination has resulted in his pre-varication from the examination- inchief. But, a significant one, his examination-in-chief and the re-examination impels us to accept the testimony that he had gone into the octroi post and had witnessed about the demand and acceptance of money by the accused. In his cross-examination he has stated that he had not gone with Baj Singh to the vigilance department at any time and no recovery was made in his presence. The said part of the testimony, in our considered view, does not commend acceptance in the backdrop of entire evidence in examination-in-chief and the re-examination.

54. The evidence of PW6 and PW7 have got corroboration from PW8. He in all material particulars has stated about the recovery and proven the necessary documents pertaining to the test carried with phenolphthalein powder. The fact remains that the appellant’s pocket contained phenolphthalein smeared currency notes when he was

searched. It is apt to take note of the fact that the currency notes that have been recovered from the right side of the pant pocket were actually prepared by PW8 by smearing them with phenolphthalein powder.

55. The appellant was caught red-handed with those currency notes. In is statement recorded under Section 313 of CrPC he has taken the plea that he is innocent and has been falsely implicated due to animosity. No explanation has been given as regards the recovery. Therefore, from the above facts, legitimately a presumption can be drawn that the accused-appellant had received or accepted the said currency notes on his own volition.

56. The factum of presumption and the testimony of PW6 and 7 go a long way to show that the prosecution has been able to prove demand, acceptance and recovery of the amount. Hence, we are inclined to hold that the learned trial Judge and the High Court have appositely concluded that the charges leveled against the accused have duly been proven by the prosecution. It is not a case that there is no other evidence barring the evidence of the complainant. On the contrary there are adequate circumstances which establish the ingredients of the offences in respect of which he was charged.**"**

In light of the aforesaid judgment, as demand and acceptance of illegal gratification was established and phenolphthalein test has also been proved positive against the accused. The testimonies of the witnesses is trustworthy and presumption under Section 20 has been attracted, the conviction by the trial Court is accordingly confirmed.

28- In the case of **V. Sejappa Vs. State by Police Inspector Lokayukta, Chitradurga** reported in **(2016) 12 SCC 150**, in paragraphs No.18 to 21 has held as under:-

"18. It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and a presumption would arise under Section 20 of the Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption

under Section 20 of the Act.

19. After referring to Surajmal v. State (Delhi Administration) (1979) 4 SCC 725, in C.M. Girish Babu v. CBI (2009) 3 SCC 779, it was held as under:-

> "18. In Suraj Mal v. State (Delhi Admn.) (1979) 4 SCC 725, 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."

20. In State of Kerala and Anr. v. C.P. Rao (2011) 6 SCC 450, it was held that mere recovery of tainted money is not sufficient to convict the accused and there has to be corroboration of the testimony of the complainant regarding the demand of bribe.

21. While dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid was an illegal gratification, reference can be made to following observation in Mukut Bihari and Anr. v. State of Rajasthan (2012) 11 SCC 642, wherein it was held as under (SCC pp. 645-46, para 11):-

> "11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. 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. However, before 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. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent

corroboration before convicting the accused person.**"**

The apex Court has summarized the principles relating to provisions as contained under Section 20 of the Act of 1988. The demand of illegal gratification is *sine qua non* for constituting the offence under the Prevention of Corruption Act, 1988. In the present case demand made by the accused was established, the phenolphthalein test was positive and the prosecution has successfully discharged its burden of proving that the accused accepted the amount other than the legal remuneration, burden of proving defence has shifted upon the accused and a presumption would arise under Section 20 of the Prevention of Corruption Act, 1988. Hence, in the peculiar facts and circumstances of the case, keeping in view the aforesaid judgments of the Hon'ble Supreme Court, the question of interference by this Court does not arise.

29- The net result is the appeal fails and is hereby dismissed. The bail bonds stands cancelled. The appellant be taken into custody and sent to jail to serve the remaining sentence.

Certified copy as per rules.

(S. C. SHARMA)
J U D G E

Tej