(2010) 03 KL CK 0111

In the High Court Of Kerala

Case No : Criminal A. No. 379 of 2003

Joseph James @ Jose — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 313(1), 374(2)
Evidence Act, 1872 — Section 8
Penal Code, 1860 (IPC) — Section 201
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 20(1), 7

Citation : (2010) CriLJ 3551 : (2010) 1 KLJ 794

Hon'ble Judges : V. Ramkumar, J

Bench : Single Bench

Advocate : G. Janardhana Kurup, P. Vijaya Bhanu and Tony Mathew, for the Appellant; M.V.S. Nampoothiry, SC for CBI and Vinu Raj, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramkumar, J.—In this appeal filed u/s 374(2) Cr.P.C. the appellant who was the accused in C.C. No. 9 of 1999 on the file of the Court of Special Judge (SPE/CBI-II), Emakulam challenges the conviction entered and the sentence passed against him for offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the P.C. Act" for short).

THEPROSECUNON CASE

2. The case of the prosecution can be summarised as follows:

During the period between 13-10-1997 and 23-2-1999 the accused (Joseph James @ Jose) was working as the Sub Inspector of Police in the Lakshadweep Police Special Branch Office at Cochin. The de facto complainant namely M.A. Jamaludheen (P.W.1) is a Labour Contractor. He wanted to make inquiries about the supply of labourers to a Contractor at Minicoy Island in the Union Territory of

Lakshadweep. Accordingly, on 22-10-1999, P.W.1 applied for a permit to visit the Island His application for permit along with the declaration of his sponsor namely Hussain Manikfan (P.W.4) and accompanied by his passport size photograph was forwarded from the office of the Secretary to the Administrator, Union Territory of Lakshadweep, Willington Island, Cochin to the Lakshadweep Police Special Branch Office, Cochin on 27-2-1999 for conducting his police verification. His application along with the aforesaid documents was received at the office of the Lakshadweep Police Special Branch on 27-2-1999 itself. After about 4 days, P.W.1 went to the office of the Secretary to the Administrator to enquire about his permit and he was directed to the office of the Lakshadweep Police Special Branch where the accused was the Sub Inspector of Police. On 27-2-1999 P.W.1 went to the office of the accused and met the accused and enquired with him about his permit. The accused told him that his application had been received in his office and police verification had to be done. The accused asked him to contact him at his office after a few days. On 15-3-1999, P.W.1 again met the accused in his office at Cochin for enquiring about his permit. At that time the accused demanded Rs. 250/- as bribe for issuing the police clearance certificate required for granting the permit to visit Minicoy Island. Since P.W.1 was not prepared to give bribe, he went to the C.B.I. office at Cochin and made a complaint in writing to the Superintendent of Police there. Thereupon a trap was laid against the accused with the assistance of the C.B.I. Officials. Accordingly, on 17-3-1999 at about 1.30 p.m. the accused was caught red handed by the C.B.I. while he was demanding and accepting a bribe of Rs. 250/- in the form of marked notes from P.W.1 at the office of the accused at Cochin. A Police Constable by name V. Balan (P.W.12) witnessed the demand and acceptance of bribe by the accused from P.W.1. Thereafter, on or about 18-3-1999 the accused made corrections in the general diary dated 17-3-1999 in his office at Cochin to make it appear that it was a police Constable by name Sajan Varghese (P.W.13) who was on duty in his office in the place of V. Balan (P.W.12) and thereby caused disappearance of evidence of the commission of the offence. The accused has thereby committed offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the P.C. Act and Section 201 I.P.C.

THE TRAIL

3. On the appellant pleading not guilty to the charge framed against him by the court below for the aforementioned offences, the prosecution was permitted to adduce evidence in 62 support of its case. The prosecution altogether examined 16 witnesses as P.Ws 1 to 16 and got marked 38 documents as Exts.P1 to P38 and 6 material objects as Mos 1 to 6.

4. After the close of the prosecution evidence, the accused was questioned u/s 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. He had the following to submit before Court:

After the deportation of a Sreelankan accused at the High Commissioner of

Chennai, he had reported back at his Special Branch Office, Kochi, in the morning of 15-3-1999. He was busily engaged in writing messages and other reports regarding the Sreelankan to his superior namely, the Superintendent of Police, Kavaratty. At about 12 noon the complainant MA. Jamaludheen entered his office room without the permission of himself or any of his subordinates. The way in which the complainant entered his office annoyed him and he shouted at the complainant to get out of his room. When he enquired about the whereabouts of the complainant it was learnt that he was from Kakkanad at Kochi and had come to enquire about his entry permit to Minicoy. This was his first meeting in his office on 15-3-1999. Thereafter he went out to perform his duties after telling the complainant that he had to make enquiries about his character and antecedents from the Thrudcakkara Police. On 17-3-1999 at about 1.20 p.m. he was about to leave for lunch along with his constable P.C. 351. After closing the files when he kept them in the ahnirah he heard a person calling him Sir. He turned back from the side ahnirah and saw the complainant Jamaludheen standing at the entrance. He did not pay any attention to him and was busily engaged in keeping the flies in the ahnirah. All on a sudden the complainant rushed to his room and threw something in his open table drawer. At once he came from the side of the ahnirah and looked towards the drawer. Seeing that it was currency notes he picked them up and shouted at the complainant to take them back by that time, the complainant had quickly got outside his room. The accused directed his constable P.C. 351 to bring the complainant immediately to his room to take back the currency notes. By that time, a team of C.B.I. officials rushed to his room and started the trap procedures. They asked him whether he had accepted any bribe money. He denied and thereupon the Dy. S.P. of C.B.I. picked up the trap money from his table drawer and kept it on the table for preparing a mahazar. The above incident was part of a planned operation arranged by P.W.4 (Hussain Manickfan) who had enmity towards him. During the year 1977 while he was working as Sub Inspector of Police, Minicoy a mason by name P.S. Sunil holding a permit under P.W.4, with the connivance of a girl from the mainland, had committed theft of a gold necklace. The theft of gold necklace was reported at the police station. On his recommendation, the permit of the said Sunil hailing from Cherthala was cancelled by the Addl. District Magistrate, Kavaratty. However, P.W.4 somehow influenced the higher authorities at Kavaratti after filing appeal against the cancellation order and managed to bring back P.S. Sunil again to Minicoy on the basis of a permit dated 6-2-1998 obtained from Kochi While, the permit holder was trying to enter Minicoy in the year 1998, he impounded his permit. Even though P.W.4 tried his level best to bring P.S. Sunil back to Minicoy his attempts were in vain: This had annoyed P.W.4 who had challenged that one day the accused will have to face the consequences. The accused is innocent.

5. When called upon to enter on his defence, the accused examined 7 witnesses as Dws 1 to 7 and got, marked 10 documents as Exts.D1 to D10.

VERDICT OF THE TRIAL COURT

6. The learned Special Judge, after trial, as per judgment dated 21-2-2003 found the appellant not guilty of the offence punishable u/s 201 I.P.C. but found him guilty of the offences charged against him under the P.C. Act. For the conviction u/s 7 of the P.C. Act he was sentenced to rigorous imprisonment for six months and to pay a fine of Rs. 3,000/- and on default to pay the fine to undergo imprisonment for one month For the conviction u/s 13(2) read with Section 13(1)(d) of the P.C. Act he was sentenced to rigorous imprisonment for one year and to pay a fine of Rs. 5,000/- and on default to pay the fine to suffer imprisonment for two months. It is the said judgment which is assailed in this appeal.

THIS APPEAL

7. I heard Senior Advocate Sri Janardhana Kurup assisted by Advocate Sri Vijayabhanu appearing for the appellant and Adv. Sri M.V.S. Nampoothiri, the learned Standing Counsel for the C.B.I. assisted by Advocate Sri Vinu Raj for the prosecution.

8. The only point which arises for consideration in this appeal is as to whether the conviction entered and the sentence passed against the appellant are sustainable or not?

THE POINT THE PROSECUTION WITNESSES

9. P.W.1 (Jamaludheen) is the de facto complainant He, however, partly turned hostile to the prosecution. P.W.2 (Muraleedharan P.S.) is an Income Tax Inspector who figured as one of the trap witnesses. He is an attester to Ext.P3 entrustment mahazar and Ext.P4 recovery mahazar. P.W.3 (Haridath) was the Inspector, C.B.I. Kochi who laid the trap. It was he who registered Ext.P14 F.I.R. consequent on the receipt of Ext.P1 F1. statement given by P.W.1 to the Dy. S.P. He prepared Ext.P3 entrustment mahazar (pre-trap mahazar) and Ext.P4 recovery mahazar (post-trap mahazar). P. W.4 (Hussain Manikfan) was the sponsor of P.W.1. He is a resident of Minicoy Island. He is a Contractor who imports skilled workers from the Mainland. P.W.5 (Kidavu) was the immediate superior of the accused. He produced Exts.P15 to P22 documents. P.W.6 (Bhaskaran Nambiar) was ahead constable attached to the office of the Special Branch Police of Lakshadweep at Kozhikode. He was examined to prove that both the Cochin and Kozhikode offices of the Special Branch Police were under the control of the accused. P.W.7 (Narayanan Nampoothiri) was a police constable in the special branch office of Lakshadweep at Kochi. He proved the entry dated 17-3-1999 made by him in Ext.P19 general diary to the effect that P.W.13 (Sajan Varghese) was the Police Constable on office duly along with the accused on 17-3-1999. The said entry was made by him as instructed by the accused. P.W.8 (Selvaraj) was a Lower Division Clerk in the Lakshdweep Administrative Office at Cochin. He proved Ext.P23 Permit Application. Form Licensing Register the entries of which will show that Ext.P5 application for permit of P.W.1 along with declaration of sponsor was received in the Lakshadweep office on 22-2-1999 and he forwarded the same to P.W.9 (N. Balaraman). P.W.9 (Balaraman) was working in the office of

the Secretary to the Administrator of Lakshadweep at Willington Island. He handed over ExtP5 application pertaining to P.W.1 to P.W.11 (V.A. Shanmugham) for forwarding the same to the Lakshadweep Police Special Branch Office., Kochi for conducting police verification in respect of P.W.1. P.W.10 (K. Sulochana) who was an attender in the office of the Administrator of Lakshadweep handed over ExtP5 application to P.W.11 as per the instruction of P.W.9 and got the acknowledgment for the same. P.W.11 (Shanmugham) who was the Stenographer of the Secretary to the Administrator upon receipt of Ext.P5 application recorded the details in Ext.P28 Permit Application Verification Register and forwarded Ext.P5 to the Lakshadweep Police Special Branch Office, Cochin on 27-2-1999 for conducting police verification. P.W.12 (V. Balan ? P.C. 351) was a Police Constable attached to the Special Branch Office, Calicut which was also under the administrative control of the accused as instructed by the accused he was sent to the Cochin Office where he reported for duty in the morning of 17-3-1999. The accused was trapped by the C.B.I. officials in the presence of this witness who had allegedly seen the accused accepting the tainted money from P.W.1. But, P.W.12 turned hostile to the prosecution. P.W.13 (Sajan Varghese) was cited by the prosecution to prove that even though he was not on duty in the Cochin office of the accused on 17-3-1999, the accused made corrections in the general diary to make it appear that P.W.13 was on duty instead of P.W.12. But this witness also did riot support the prosecution. P.W.14 (Harivalsan) was the Additional Superintendent of Police, C.B.I., Cochin. On the Superintendent of Police, C.B.I. receiving Ext.P1 complaint from P.W.1 alleging that the accused was demanding Rs. 250/- as bribe for conducting police verification, the Superintendent of Police entrusted the matter with P.W.14 who arranged the trap through P.W.3. P.W. 15 (Rajesh Khurana), Superintendent of Police, Union Territory of Lakshadweep proved Ext.P32 order according sanction to prosecute the accused. P.W. 16 (J.R.D. Cruz) was the Inspector of Police, C.B.I., Cochin who conducted the investigation and laid the charge against the accused.

DEFENCE WITNESSES

10. DW1 (Syed Shaik Koya) was the Secretary to the Administrator of Lakshadweep. He proved Ext.D6 which is me copy of a photostat copy of an office memorandum dated 10-2-1990 laying down the procedure for declaration to be given by sponsors for the issue of entry permits. DW2 (Unnikrishnan Nair) was a Junior Engineer in the Lakshadweep Public Works Department. Heproved Ext.D7 plan which is identical with Ext.P12 plan showing the first floor of the building including the offices of the accused. DW3 (George) is a photographer running a photo studio at Vazhakkala in Cochin. He proved Ext.D8 series of photographs showing the cabin of the accused and its surroundings. DW4 (Krishna Kumar) was the Cochin City Police Assistant Commissioner. He deposed before Court that P.W.16 had contacted him for the details of one Jamal who was his neighbour and that he told P.W.16 that he had not asked the said Jamal involved in a decoity case not to appear before the C.B.I. office where he was

summoned for the purpose of investigation. DW5 (Subair) who claims to be a contractor rendering service at the Lakshadweep office at Willington Island deposed that on 15-3-1999 he had been P.W.1, a habitual offender, on the first floor of the Lakshadweep building at Willington Island and P.W.1 had told him that he had come there along with C.B.I. officials for an operation and this witness would get the full facts from the dailies on the next day, DW6 (P.P. Raghavan) was summoned to prove that as per the entries in the Register for Permit with Adverse Remarks, one P.S. Sunil who was a permit holder was involved in the theft of a necklace at Minicoy Islands arid that at the intervention of the accused the said Sunil was blacklisted. DW7 (Aliyar @ Ali) is a wholesale vegetable merchant at Market Road, Ernakulam. He claims to have gone to Lakshadweep Administrative Office at Willington Island after the Christmas in the year 1998 and purchased Ext.P5 application for permit and approached P.W.4 who requested him to co-operate with him for the purpose of trapping the accused and since he was not willing he introduced his friend P.W.1 to P.W.4 for the said purpose and that himself and P.W.1 were co-accused in several cases involving motor vehicles.

ARGUMENTS FOR THE APPELLANT

11. The learned Counsel appearing for the appellant made the following submissions before me in support of the appeal:

The specific case of the prosecution is that on 15-3-1999 when the de facto complainant (examined as P.W.1) went and met the accused in his office at Cochin for inquiring about the entry permit, the accused demanded Rs. 250/- as bribe, for issuing the police clearance certificate. But what P.W.1 deposed while in the witness box is that it was the head constable who told him on 15-3-1999 that P.W.1 will have to bribe the Sub Inspector. P.W.1 would depose that he did not meet the accused on 15-3-1999 prior to the lodging of the complaint before the C.B.I. As against the prosecution case that on 17-3-1999 P.W.1 handed over the tainted money to the accused and the accused accepted the same in his right hand and put the money in the drawer of his table, P.W.1 has deposed that he had straightaway put the tainted money in the drawer of the accused. Apart from deviating from his statement u/s 161 Cr.P.C. P.W.1 has not proved any demand of bribe by the accused either on 15-3-1999 or on 17-3-1999. Eventhough P.W.1 was declared hostile to the prosecution, Exts. P2(a) to P2(g) which are his case diary contradictions were not proved through P.W.16 the Investigating Officer. In the absence of any previous demand of any pecuniary advantage or valuable thing, there cannot be a conviction u/s 13(1)(d) of the P.C. Act. In C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala, the Apex court has held that mere acceptance of money is not enough and that for convicting a person u/s 13(1)(d) there must be evidence on record to show that such person "obtained" for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or that he "obtained" for any person any valuable thing or pecuniary advantage without any public interest. P.W.2 who is an Income Tax Inspector was only a trap witness who was interested in the success of the trap. He was accompanying P.W.3 the Inspector who laid the trap. Hence, the prosecution was bound to obtain independent and trustworthy corroboration for his evidence. (Vide Ram Prakash Arora Vs. State of Punjab,). The evidence of P.W.3 the trapping officer also should receive independent corroboration as was held in Darshan Lal Vs. The Delhi Administration, . Eventhough P.W.2 has deposed about P.W.1 handing over the nip money to the accused he does not mention about any demand for money by the accused. While according to P.W.3 who laid the trap P.W. 14 arranged the independent trap witnesses namely P.W.2 and one Augusthy (C.W.2) and got the confirmation about those witnesses only at 10 a.m. P.W.2 would say that he had reached his office (income tax office) at 9 a.m. and thereafter reached the C.B.I. Office at 10 a.m. P.W.2 has also admitted that the accused could not see him and others who waited outside the cabin of the accused. According to P.Ws. 2 and 3 it was by standing at the point Ext.P12 (a) in Ext.P12 plan that they had seen the transaction. It is highly doubtful whether they had seen the transaction by standing at that point. If so, he also could not have seen the accused or P.W.1 handing over the marked notes to the accused He testimony of P.Ws. 2 and 3 suffers from material contradictions. If, according to the prosecution, the demand for bribe was made by the accused on 15-3-1999, there is absolutely no explanation for P.W.1 as to why he lodged the complaint only on 17-3-1999. Reprosecution was bound to explain the above delay. According to the prosecution, P.W.1 had first gone to the Superintendent of Police, C.B.I. to voice his grievance about the alleged demand of bribe by the accused. But the Superintendent of Police has not been examined by the prosecution. C.W.2 (Augusthy) was a material witness. Even according to P.Ws 2 and 3 it was the said Augusthy who actively participated in the pretrap and posttrap proceedings by washing the hands, noting the numbers of the marked notes etc. But instead of examining him the prosecution has examined only P.W.2 who had only a passive role. The case of the prosecution that it was P.W. 12 a police constable who was sitting inside the cabin besides the accused has not been supported by P.W.12 or Ext.P19 General Diary. Merely because P.W.12 has turned hostile to the prosecution, it does not follow that he is unworthy of credence. Exts.P29 and P29(a) which are the case diary contradictions of P.W.12 have not been proved through P.W.16, the Investigating Officer; The prosecution has suppressed the whereabouts of the person who was allegedly inside the cabin of the accused before P.W.1 entered the room. A conviction u/s 13(1)(D) is not possible without proving a demand for bribe. (Vide Subash Parbat Sonvane Vs. State of Gujarat,) - Merely because P.W.1 has admitted that what is stated in Ext.Pl complaint is true, it does not have the effect of converting the contents of Ext.P1 complaint into substantive evidence.

JUDICIAL EVALUATION

12. I am afraid that I find myself unable to agree with the above submissions made on behalf of the defence. P.W.1 who came to Court and said that he did not

meet the accused on 15-3-1999 and there was, therefore, no previous demand for bribe by the accused has however, admitted as follows even in examination-in-chief.

Translation

[I, thereafter went to the C.B.I. Office and gave a complaint against the Sub Inspector. What was: stated in my complaint was that the Sub Inspector had demanded Rs. 250/- as bribe. Ext.P1 is the said complaint given in writing by me. It contains my signature. Everything that is stated in the complaint is true. I had been to the office of the Sub Inspector. The statement in Ext.P1 that I had met the Sub Inspector on 15-3-1999 is true. The further statement in Ext.P1 that for issuing the police verification report he I should give Rs. 250/- as bribe to him is true. Is the statement in Ext.P1 that if Rs. 250/- rupees was given as bribe on 17-3-1999 the accused told you that he will set everything right, true (Q) Yes. (A). Have you stated in Ext.P1 that it was the head constable who told you that Rs. 250/- will have to be given to the sub Inspector? (Q) No. (A). What is stated in Ext.P1 are the true facts. It was to an Inspector by name Haridath that I gave Ext.P1 complaint].

In the face of the above testimony of P.W.1, his earlier statement that he did not meet the Sub Inspector on 15-3-1999 and that it was the head constable who told him that the Inspector will have to be bribed, is of no consequence. It is pertinent to note that the fact that P.W.1 had met the accused in his office on 15-3-1999 is a fact which is admitted by the accused in his statement u/s 313 Cr.P.C. P.W.1 has also admitted everything which transpired at the time of Ext.P3 entrustment mahazar as well as Ext.P4 recovery mahazar. During his cross-examination by the Public Prosecutor P.W.1 has deposed as follows:

Transalatlon:

[By about 1 p.m. we reached the office of the accused. The office of the accused is on the first floor. Myself and Haridath went to the first floor. I got into the cabin of the accused for giving the money. At that time there was a police constable in that cabin. I gave the trap money to the accused in the presence of the police constable. It was by keeping the trap money in the drawer of the table that I gave it to the accused. At that time the accused told me him that he will issue the permit. Immediately Haridath and the other CBI officials and the two witnesses mentioned by me earlier came into the cabin. The C.B.I. people took the money from the drawer].

13. No doubt, what is recorded in Ext.P4 recovery mahazar is that P.W.1 directly handed over the money to the accused and the accused received the trap money in his right hand and put it in the drawer. The testimony of P.W.2 is also to the same effect. So, by stating before court that he himself put the money in the drawer of the accused P.W.1 was deliberately making a departure from his own previous statement to the police. Much strain is not necessary to conclude that P.W.1 who was won over by the accused was turning out to be a cunning

performer in the witness box evidently to salvage the accused. P.W.2 who is an Income Tax Officer and holding a responsible position in the Central Government had absolutely no motive against the accused and he has credibly deposed that by standing just outside the Cabin of the accused he had seen P.W.1 handing over the money to the accused and the accused receiving the same in his right hand and putting the tainted notes in the drawer of his table. All the prosecution witnesses were unanimous regarding the fact that after the C.B.I. Officials entered the cabin of the accused when the right palm of the accused was dipped in sodium carbonate solution the solution had turned pink thereby indicating that the right hand of the accused had come into contact with the trap money which had been smeared with phenolphthalein powder. Ext.P4 recovery mahazar also corroborates the said fact. Similarly, when the left hand of the accused was dipped in sodium carbonate solution there was no colour change to the solution thereby indicating that the left hand of the accused had not come into contact with the trap money which had been smeared with phenolphthalein powder. When P.W.1 has admitted that he gave Ext.Pl complaint before the C.B.I. alleging that the Sub Inspector had demanded Rs. 250/- as bribe for showing an official favour and pursuant to the said demand he went to the room of the accused and handed over the tainted money to the accused and the accused received the same in his right hand and put the marked notes into the drawer of the accused and Ext.P1 complaint does not state that there was any protest or remonstrance by the accused to the above conduct of P.W.1, the deliberate departure made by P.W.1 from the witness box that he directly put the bribe money in the form of marked notes in the drawer of the accused can be taken only with a pinch of salt. At any rate, the departure made by P.W.1 (who confessed that every syllable in his complaint is true) cannot be treated as a circumstance in favour of the accused. It is significant to note that going by the entries made by the accused Li his own hand in Ext.Pl 9 General Diary on 17-3-1999 his case was that bribe money was attempted to be forcibly thrust upon him by P.W.1 who was sent by the C.B.I. officials and when he refused, the money fell on his table. He had no case that he had touched the bribe money. But at the time of 313 examinations he would come out with a new case that P.W.1 suddenly entered his room and abruptly put the bribe money in the drawer of his table and suddenly went out and he then picked up the money and shouted at P.W.1 to take away the money. Even P.W.1 has no case that when he put the bribe money in the drawer the accused protested. On the contrary, what he says at page 13 of his deposition is as follows:

Translation:

[When I gave the money to the accused he did not refuse it. The money was given as bribe for the permit]

In A. Sasidharan v. State of Kerala 2007 (2) KLD 600 this Court had observed that the normal involuntary reaction of a public servant in whose drawer currency notes are thrust without his knowledge or consent would be to throw away the notes and rebuke the person who attempted to bribe him. No such thing happened in this case as well. If so, the phenolphthalein test showing positive with regard to the right hand of the accused corroborates the prosecution case that the accused had touched the notes with his right hand. The case of P.W.2 the independent Income Tax Officer who witnessed the scene happening inside the cabin of the accused is consistent with the recitals in Ext.P4 contemporaneous mahazar wherein also it is stated that P.W.1 had handed over the tainted money to the accused who accepted the same with his right hand and put the same in the drawer of his table. Once it is proved that the accused accepted the tainted money it can be inferred that he "obtained" the money pursuant to a demand (See M.W. Mohiuddin v. State of Maharashtra (1995) 3 SCC 562. According to the prosecution P.W.12 Balan (P.C. 351) was the police constable who was inside the cabin of the accused on 17-3-1999. Corrections were made by P.W.7 on the directions of the accused in Ext.P19 general diary to the effect that on 17-3-1999 it was P.W.13 Shajan Varghese (P.C. 312) the police constable who was on duty in his cabin. The original entries showing P.W.12 as the constable on duty were altered to substitute the name of P.W.13. Whether or not P.W.12 was posted on duty in the cabin of the accused on 17-3-1999, the fact remains that even P.W.12 has admitted that he was inside the cabin of the accused when P.W.1 came to hand over the tainted money to the accused on that day. As per the 313 statement of the accused also the Constable who was in his room when P.W.1 came to his room was P.C. 351 who is none other than P.W.12. P.W.12 was however, rendering lip service to the accused (who is his official superior) by deviating from his earlier statements given to the investigating officer to depose before court that P.W.1 suddenly came to the cabin of the accused and inserted the notes in the table drawer of the accused and abruptly went out and the accused asked P.W.12 to fetch P.W.1. P.W.12 has admitted the presence of P.Ws 2 and 3 just outside the cabin of the accused. He has also admitted that persons standing outside the cabin of the accused at the point Ext.P12(a) could see the accused as well as P.W. 12. Even though the accused when examined u/s 313 Cr.P.C. had put forward a case that when P.W. 1 came and inserted the currency notes inside his drawer he picked up the same and shouted at P.W.1 to take it away (presumably to explain the result of phenolphthalein test on his right hand) P.W. 12 has no case that the accused had picked up the notes. Even the accused had no such case in Ext.P19 General Diary entry made in his own hand. Therefore, as was held in Sultan Ahmted''s Case 1974 Cri.L.J. 895 S.C., the improved version given by the accused during his 3134 examination was a clear afterthought What P.W. 12 would say is that when the C.B.I. officials asked the accused as to where was the bribe money the accused took out the notes from his drawer and kept them on the table and this according to him was prior to the hand wash of the accused. But Ext.P4 contemporaneous mahazar as well as the testimony of P.Ws 2 and 3 will clearly show that the hands of the accused were washed both prior to and after the accused took out the notes from his drawer and placed them on the table and there was no colour change before the above act of the accused and the solution turned pink only after the above act of the accused.

14. P.W.2 has inspiringly stated before Court that when P.W.1 first entered the cabin of the accused he was asked to wait outside and five minutes later somebody came out and called P.W.1 inside. If it was Balan (P.W.12) who had called P.W.1 inside, P.Ws. 2 and 3 who were waiting outside would have seen him. Notwithstanding the hostility shown by P.W.1 he has admitted that when he put the tainted money inside the drawer of the accused the accused promised to issue the permit. If the accused was not a consenting party, his reaction would have been different. Going by the testimony of P.Ws. 2 and 3 both of them were standing just outside the cabin of the accused carefully avoiding their detection by the accused and from that position they could see what was happening inside the cabin. The door of the cabin was kept open. Even P.W.12 who obliged the accused (who is his superior) has admitted that from the point Ext.P12(a) where P.Ws 2 and 3 were standing they could see the accused as well as P.W.12. Ext.D2 plan prepared by DW2 is also an exact replica of Ext.P12 plan and nothing turns on Ext.D2. If so, the testimony of P.W2 that he saw P.W.1 handing over the money to the accused and the latter accepting the money in his right hand and putting the same in his drawer is fully believable.

15. In Raghubir Singh Vs. State of Haryana, , the principle of res ipsa loquitur was pressed into service by the Apex Court to accept the prosecution case that the accused was found in possession of marked currency notes pursuant to an allegation that he demanded and received the bribe. The said verdict was followed in State of Andhra Pradesh v. R. Jeevaratnam (2004) 5 SCC 686 wherein the Apex Court also relied on the presumption u/s 20(1) of the P.C. Act to support the conviction recorded by the Special Judge for an offence u/s 7 of the PC. Act. In the above said decision, the Supreme Court set aside the judgment of acquittal passed by the High Court and restored the conviction by the trial Court. In Sultan Ahammed v. State of Bihar 1974 Crl.L.J. 895 - the failure on the part of the accused to come out with an instant explanation when the police officer openly announced in the presence of witnesses that the accused had accepted bribe from the complainant in that case, was accepted by the Supreme Court as a conduct in support of the prosecution case. The conduct of the accused in opening his table drawer and taking of the marked currency notes when he was asked as to where he had kept the money was held to fall u/s 8 of the Evidence Act and that the same could be relied on as a piece of incriminating evidence. (See Prakash Chand Vs. State (Delhi Administration),). It is no defence for the accused to contend that he did not have the intention, much less, the official capacity to do the alleged act or refrain from doing the alleged act (See Shiv Raj Singh Vs. Delhi Administration,). Similarly, the misconduct by the public servant need not necessarily be in connection with his own official duty. The observation made in The State of Ajmer (Now Rajasthan) Vs. Shivji Lal, that if the official favour promised by thepublic servant to the giver of the money was not in the hands of the public servant, he cannot be said to have misconducted himself in the discharge of his own duty was disapproved and the said decision

was overruled by a Constitution Bench of the Apex Court in Dhaneshwar Narain Saxena Vs. The Delhi Administration, . It is true that as was held in C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala, , mere recovery of tainted money by itself, in the absence of evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it tobebribe, may not be enough. But then, in a case as the present one where no money was due to the accused public servant from the bribe giver, acceptance of the marked notes by the accused can certainly be presumed to be with the full knowledge that it was bribe money. P.W.3, the Inspector of C.B.I. who arranged the traphas inspired the confidence of the trial Judge who had the unique advantaged seeing the witnesses and assessing their testimonial fidelity. The evidence of such an impartial witness can be acted upon without any corroboration. (See State of U.P. Vs. Zakaullah,).

16. The defence evidence adduced by me appellant also has been incapable of offsetting the conclusion reached by the court below of Both P.Ws and 4 have emphatically denied the defence suggestion that P.W.4 had a grouse against the accused and that P.W.4 was behind the trapping of the accused by the C.B.I. The trial judge who had the unique advantage of seeing the witnesses and assessing their credibility was not inclined to accept the defence version that P.W.1 was a stooge in the hands of P.W.4 Even assuming that one Sunil sponsored by P.W.4 was black-listed at the intervention of the accused, mere is no reason Why P.W.4 should muster courage to trap the accused a police officer. I have no hesitation to conclude that the said story put forward by the accused is nothing but an intelligent ploy to prejudice the mind of the Court and exculpate himself.

17. After a careful re-appraisal of the oral and documentary evidence and after hearing both sides, I have no hesitation to conclude that the conviction against the appellant was rightly recorded by the trial judge. I, therefore, confirm the conviction recorded by the court below against the appellant for offences punishable under Sections 7 and 13(2) of the P.C. Act.

18. What now survives for consideration is the adequacy or otherwise of the sentence imposedon the appellant. As observed by the Apex Court in Ram Kishan v. State of Delhi AIR 1956 SC 475 - there is no warrant for the view that offences committed during the course of traps are less grave and call only for lenient or nominal sentences, Theappellant/accused is a police officer who was expected to maintain high standard of integrity and uphold the dignity of law. It was such a person who demanded and accepted bribe for showing an official favour to P.W.1. Hence, the sentence of rigorous imprisonment for six months and fine of Rs. 3,000/- u/s 7 and the sentence of rigorous imprisonment for one year and a fine of Rs. 5,000/- for the conviction u/s 13(2) read with Section 13(1)(d) of the P.C. Act, cannot, by any standards be said to be excessive or disproportionately harsh. If at all, the learned Special Judge has erred, it was on the side of leniency. But in the absence of an appeal by the prosecution, I see little scope for interference with the sentence awarded to the appellant.

In the result, this appeal is dismissed confirming the conviction entered and the sentence passed against the appellant.

