(2012) 01 UK CK 0020

In the Uttarakhand High Court

Case No : Criminal Appeal No. 184 of 2002

Kali Charan Verma APPELLANT

Vs

Central Bureau of Investigation Dehradun RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 13D(1), 20, 4(1)

Citation : (2012) 1 NCC 489

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Judgement

Hon''ble B.S. Verma, J.—This appeal, u/s 374 of Criminal Procedure Code, has been preferred against the judgment and order dated 24-7-2002, passed by Smt. Indira Ashish, Special Judge, C.B.I./Anti-Corruption, Dehradun, in C.B.I. Case No. 19 of 1996, C.B.I. Versus Kali Charan Verma, convicting the accused/ appellant u/s 7 of Prevention of Corruption Act and sentencing him to undergo Rigorous Imprisonment for one year and to pay a fine of Rs. 1000/-, and in default of payment of fine to further undergo R.I. for three months and further convicting the accused/appellant u/s 13(1)(d) read with section 13(2) of Prevention of Corruption Act and sentencing him to undergo Rigorous Imprisonment for two years and a fine of Rs. 2,000/-, and in default of payment of fine to further undergo R.I. for six months. However, it was directed that both the sentences shall run concurrently.

2. Brief facts of the case are that complainant Sri Sudhir Kumar son of Sri Mahendra Singh R/o 594/11/111, B.H.E.L., Haridwar is a contractor by profession and he was given contracts by B.H.E.L. Factory Haridwar. Contract No. 61/CF/11/ CA/WO/93-94 dated 20-12-1993 was completed by him on 15-9-1995 and contract No. 57/FS/CA/WO/95-96 dated 20-8-1995 was completed by him on 20-8-1996. At that time accused Kali Charan Verma was posted as Sanitary Inspector in Horticulture Office in Civil Factory of B.H.E.L. Haridwar. On

20-8-1996, Contractor Sudhir Kumar after completion of contract works, submitted application for refund of security amounting to Rs. 2,161/- and Rs. 1,738/-, to accused Kali Charan Verma. On 30-8-1996 Sri Sudhir Kumar also met personally to accused to expedite the refund of his security. The accused demanded a sum of Rs. 500/- as bribe from the complainant Sudhir Kumar so as to forward the papers of refund of security to the higher authorities. At this the complainant, contacted in the office of Superintendent of Police, C.B.I. Dehradun on phone and he was informed by the C.B.I. that Inspector P.K. Chaudhary is staying at Retiring Room, Railway Station Haridwar in connection with some government work and he should meet him in the morning at 6.00 am on 31.8.96. Then he prepared complaint Ext. Ka.12 addressed to Superintendent of Police, C.B.I. Dehradun, and handed it over to Inspection C.B.I. Sri P.K. Chaudhary on 31.8.1996 at 6 a.m. at the retiring room of Railway Station, Haridwar. On receiving the complaint, Sri P.K. Chaudhary, prepared the F.I.R. of R.C. 00 (A)/1996 DAD and started the proceeding to trap the accused red-handed at 7 a.m. in retiring room No.5 in the presence of Sub-Inspector Sri R. Chahal, Constables Kalam Singh and Bhairav Dutt and independent witness Pratap Singh Rawat and Sri V.S. Rawat, Assistant Manager, Punjab National Bank, Regional Office, Haridwar and prepared pre-trap memo Ext. Ka.5. During the pre-trap proceeding, the witnesses were satisfied that in-fact the complaint of the complainant is true. The trapping team also demonstrated all the formalities relating to trap, in which plain paper containing phenolphthalein powder (in short P.P. powder), were kept in envelope D-2 after touching the fingers of right hand of witness V.S. Rawat. After dipping the fingers of Sri V.S. Rawat in the colorless solution of water and Sodium Carbonate kept in a tumbler, it turned in rosy colour and the same was kept in a phial D-1, got sealed and all the witnesses signed it. Thereafter five notes of Rs. 100/-each, bearing numbers 25-P-141830, 1-GV-44413, 6-CS-554411, 7-ES-748224 and 2-PV-563881, which were intended to be given to accused in bribe, were shown to witnesses and P.P. powder was applied to these notes by constable Kalam Singh and remaining P.P. powder was kept in a separate envelope D.3 and proper instructions were given to the trapping team. Witness Pratap Singh Rawat was asked to follow the complainant Sudhir Kumar in order to witness the incident of taking bribe and to hear the talks between the complainant and the accused. The complainant was instructed that after giving bribe to the accused, he will give the signal to trapping team by touching his head by his right hand and similarly the witness Pratap Singh will give signal to other members of trapping team. The notes applied with P.P. Powder were kept in the front pocket of shirt of the complainant and he was instructed not to touch them, until bribe is not demanded from him and after demanding bribe by accused from him, he would give them to the accused and beside these notes he would not keep any other thing with him. All the members of trap team as well as the witnesses were also searched and nothing was found with them. It was also assured after washing the hands of the team members by soap that no part of P.P. Powder is present on their hands. All these proceedings were started at 7 a.m. and was completed at 8.15 a.m. and after preparing pre-trap memo all the present persons signed its all pages.

3. The further case of C.B.I. is that at 9 a.m. on 31.8.1996, complainant Sudhir Kumar and witness P.S. Rawat went in a scooter in the office of accused and other team members went there in a Maruti Van after taking permission to go inside the office. There accused demanded the sum in bribe from the complainant, which was given to the accused by Sudhir Kumar after taking out the same from his right hand from the left front pocket of his shirt. The accused took these notes from his right hand and kept in side the drawer of table. At this the complainant as well as the witness Pratap Singh Rawat as per directions, given to them, signaled the trap-team members. The Inspector Sri Chaudhari and Sub-Inspector Sri Chahal introduced themselves to the accused and got arrested the accused and caught hold of his both the hands. On disclosure by Sudhir Kumar that the accused has kept the notes inside the drawer of the table, C.B.I. Inspector Sri Chaudhary asked the another witness V.S. Rawat to take out the notes from the drawer of the table and he took out five notes of Rs. 100/- each from the drawer and tallied their numbers from the numbers of notes mentioned in pre-trap memo and they were bearing the same numbers. At the spot the fingers of right hand of the accused were drowned in the solution of water and sodium carbonate and the colour of water became rosy. This water was kept in R-1 phial and it was sealed and signatures of witnesses were obtained on it. This R-1 phial is Material Ext. 6. The notes recovered in bribe were kept in an envelope R-1 which is Material Ext. 12. It was also sealed and signatures of witnesses were also obtained on it. Then after dipping the fingers of left hand of accused in the solution of water and sodium carbonate, the water did not change its colour. Recovery memo Ext. Ka.6 was prepared at the spot and it was signed by the trap-team and the witnesses and after giving a copy of it to the accused, signature of the accused were also obtained on it. Search and arrest memo of accused, Ext. Ka.7 was also prepared, copy of which was also given to the accused and his signatures were also obtained.

4. Thereafter the trap-team made search of the office and residence of the accused and search lists Ext. Ka. 8, Ka.9, Ka.10 and Ka.11 were prepared, copies of which were also given to the accused after obtaining his signatures. The site-plan Ext. Ka.19 was also prepared. Thereafter the accused in arrest condition along with other documents, was presented before S.P., C.B.I. Dehradun, on whose order, Ex. Ka.12/2, F.I.R. Ext. Ka.20 was lodged. Thereafter the investigation of the case was handed over to Sri O.P. Parera, Inspector C.B.I./ Special Establishment, Dehradun, on the orders of S.P., C.B.I. Dehradun, who after completing the investigation, submitted charge sheet Ext. Ka.21 against the accused.

5. The charge sheet was submitted to Court by the C.B.I. The Special Judge, C.B.I./Anti-Corruption, framed charges U/Ss 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988. The charges were read over and explained to the accused, to which he pleaded not guilty and claimed his trial.

6. The prosecution, in support of its case has examined P.W.1, Sri K.P. Dixit, P.W.2, Pratap Singh Rawat, P.W.3, V.S. Rawat, P.W.4, Sudhir Kumar, P.W.5, Arun Kumar, P.W.6, Sri P.K. Chaudhary and P.W.7, Inspector Sri O.P. Parera.

7. Thereafter the statement of accused was recorded u/s 313 Cr.P.C. In his statement the accused admitted that on 30-8-1996 he was posted as Sanitary Inspector in B.H.E.L. Haridwar, but he denied this fact that on 30-8-1996 at 11 a.m. he demanded a sum of Rs. 500/- as bribe from Sudhir Kumar, so that he may forward his documents of refund of security to higher authorities. He showed ignorance to this fact that applications Ex. Ka.13 and Ext. Ka.14, along with carbon copies, Ext. Ka.13/1 and Ka.14/1, were pending for with him for forwarding the same to Deputy Manager and he alleged that he has been falsely implicated in the case. The accused also denied the whole trap-proceedings.

8. In defence the accused has examined his wife D.W.1, Smt. Angoori Devi and also filed three documents.

The learned Special Judge, C.B.I./Anti/Corruption, after hearing learned counsel for parties and considering the entire material available on record, found the accused Kali Charan Verma, guilty of offence U/Ss 7 and 13D(1)(d) read with Section 13(2) of Prevention of Corruption Act and accordingly convicted the accused U/S 7 of Prevention of Corruption Act and sentenced him to to undergo Rigorous Imprisonment for one year and to pay a fine of Rs. 1000/-, and in default of payment of fine to further undergo R.I. for three months and further convicting the accused/appellant u/s 13(1)(d) read with section 13(2) of Prevention of Corruption Act and sentencing him to undergo Rigorous Imprisonment for two years and a fine of Rs. 2,000/-, and in default of payment of fine to further undergo R.I. for six months. However, it was directed that both the sentences shall run concurrently.

9. Feeling aggrieved, the accused/appellant has preferred this appeal.

10. I have heard learned counsel for the parties and have gone through the record.

11. Learned counsel for the accused/appellant has firstly submitted that there is cutting and overwriting regarding case number noted over pre-trap memorandum, Ext. Ka.5, recovery memorandum Ext. Ka.6, search lists Ext. Ka. 8 and Ka.9, seizure memo Ext. Ka.11, and it appears that case No. 10(A)/96 DAD has been overwritten as Case No. 00(A)/96 DAD on these papers, whereas on inventory/observation memo, Ext. Ka.10 it has been written as R.C. 10(A)/96 DAD and on site plan Ext. Ka.19 it has been noted as R.C. 00(A)/96 DAD. He also contended that generally the Case number starts from ''0'' or ''nil'' and this overwriting on the aforesaid documents clearly indicate that the proceedings of pre-trap were not done and these documents have been prepared later-on and the story of trapping is totally vitiated.

12. The learned counsel appearing on behalf of C.B.I. has refuted the above

submission and contended that the C.B.I. team do not have the General Diary (in short G.D.) with them and they have to give case number with ''0'' ''nil'' or ''oo'' and lateron when the F.I.R. of the offence is lodged then the case number is noted according to serial number of G.D. while registering the case and preparing the G.D. He also submitted that all these documents relate to pre-trap proceeding and when the F.I.R. was lodged then case No. RC ?00/14(A)96 was given. At the time of pre-trap proceeding the R.C. No. 00(A)/96-DAD was given which is also clear from the contents of F.I.R. in which it is clearly mentioned that Sri P.K. Chaudhary, Inspector treated the complainant as zero-zero (00(A)/96-DAD and when the case was registered and G.D. entry was made the Case No. starts with 00/14(A)96, thus it is quite obvious that at the time of pre-trap R.C. No. was given ''00''.

13. The submission advanced by learned counsel of C.B.I. has substance. It appears that the Sri P.K. Chaudahry, Inspector has treated the complainant of the complainant as 00-A/96-DAD and on some documents referred above, there is cutting and overwriting and it appears that ''10'' has been overwritten as ''00?. All these documents pertains to pre-trap proceeding and as the pre-trap team has to give the case temporary case number, as they do not have the serial number of G.D., therefore, the same is not fatal to the C.B.I. case, particularly, when this defect has been cured by registering the case in the G.D. as R.C. No. 00/14-A/96 DAD and thereafter all the documents bear this R.C. number. Further, these documents bear the signatures of complainant, eye witnesses, members of pre-trap party as well as the accused and these witnesses have deposed that these documents were prepared at the spot and they had signed the same, hence it cannot be said that these documents were not actually prepared at the time of pre-trap proceeding.

14. The next submission of learned counsel for the accused/appellant is that the sanctioning authority has not applied his mind at the time of according the sanction. He argued that the sanction order must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. Material collected during the investigation were not available before the sanctioning authority and the sanctioning authority had given the sanction in a cursory manner and as the sanction order being illegal, the whole trail started on such sanction order can not be relied upon. In support of his contention, learned counsel for the accused/appellant has cited before me the case of State of Karnataka versus Ameerjan, reported in (2008) 1 Supreme Court Cases (Cri) 130.

15. Learned counsel for the C.B.I. has contended that the sanction is a valid sanction. The sanctioning authority had examined all the material collected during investigation and after perusing the case diary as well as other documents he had applied his mind before granting sanction of prosecution against the accused/appellant.

16. In order to determine this fact whether the sanction order is a valid order or

not, I have examined the statement of P.W.1, Sri K.P. Dikshit, who was Deputy General Manager, in BHEL Hardiwar at the time of the incident. This witness has deposed that he is competent officer to dismiss the services of Supervisor, workers and Executives upto grade-1 level. He has proved the sanction order Ext. Ka.1 and deposited before according sanction he had seen all the documents of C.B.I. relating to the case and he had also discussed with C.B.I. Inspector Sri O.P. Parera in connection with the case. He further deposed that he had also perused the case diary and only after perusing all the documents he had accorded sanction after applying him mind. In his cross-examination this witness, on a court question has deposed that after considering all the material submitted by C.B.I. and circumstances of the case, he had found it a fit case for according sanction. The suggestion given by defence this witness has denied that he had reached to a conclusion that it was a false case.

17. I have also gone through the case of ''State of Karnataka vs. Ameerjan'' (supra) and am of the opinion the same is not helpful to the case of the accused/appellant. In the above cited case the order of sanction was issued by the Commissioner of Stamps solely on the basis of a purported report issued by I.G. Police, Karnataka Lokayukta and even the said report was not brought on record and it was opined that whether in the said report, either in the body thereof or by annexing therewith the relevant documents, I.G. Police Karnataka Lokayukta, had placed on record the material collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. The Hon?ble Apex Court has observed that the application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. The material placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced.

18. In the instant case the sanctioning authority has accorded the sanction after perusing the materials collected by C.B.I. and after being satisfied the sanction was granted. When the chick F.I.R. was drawn, its copy was also sent to Special Judge, Anti Corruption, U.P. (East) Dehradun for information as is apparent by perusal of chick F.I.R. Ext. Ka.20. All the documents of C.B.I. have been proved and exhibited in the instant case. Therefore, in the totality of circumstances of this case, it can safely be inferred that sanction order is a valid order.

19. Learned counsel for the appellant also attacked the authenticity of the C.B.I. case on the point that according to prosecution, P.W.2, Pratap Singh Rawat, is the shadow witness and he had accompanied the complainant so as to hear the conversation between the complainant and the accused and also to witness the scene of demand and acceptance of bribe by the accused, but this witness has stated that he could not hear the conversation. This witness also stated that accused and complainant had some talks and they came out side from the office

and again they went inside the office. Learned counsel contended that the complainant intentionally brought the accused out of his office so that money could be planted and placed in the drawer of the table. He also submitted that the complainant nowhere deposed that he and the accused had come out of the office and all this goes to show that when the complainant and accused came out of office some one placed the envelope containing the notes in the drawer of the table of accused and the accused has been falsely implicated in the case.

20. In context of above submission of learned counsel for the accused/appellant I have examined the statements of P.W.2, Pratap Singh Rawat and P.W.4, complainant Sudhir Kumar. P.W.2, Pratap Singh Rawat has deposed that on 31-8-1996 he was posted as Assistant Manager in Regional Office, Punjab National Bank Jwalapur Haridwar. In the morning, his Regional Manager instructed him on phone that he should report to Sri P.K. Chaudhary CBI Inspector Dehradun for some secret operation and the Inspector was camping at retiring room No.5 of Railway Station Haridwar. He reached the said retiring room prior to 7.00 a.m. This witness has deposed about the formalities of pre-trap. He has also proved the documents prepared by the CBI team during trap proceeding. He also deposed that the trap-team reached the office of accused after taking permission. He and complainant Sudhir Kumar went towards the office of the accused, some members of the team went towards right side and some were moving towards left hand side. He further deposed that Sudhir Kumar went in the office of the accused and this witness was standing at a distance of about 15 feet from them. The accused and Sudhir Kumar had some talks and they came outside of office talking with each other. This witness went behind. Again the accused and Sudhir Kumar went inside the office talking with each other and he came near to his earlier position. At this Sudhir Kumar took out the notes kept in the left pocket of his shirt and gave the same to the accused. Sudhir Kumar had taken these notes from his right hand and the accused also accepted the notes by his right hand. He further deposed that the accused had kept the notes in the drawer of his table. This witness also deposed that he had seen the process of opening the drawer by the accused but he could not see clearly keeping the notes in the drawer by the accused, but by action of hands of accused it was quite clear that he had kept the notes in the drawer. When the accused kept the notes in the drawer then Sudhir Kumar gave signal by itching his head and thereafter he also gave signal to other members of trap tem and then all the members of trap-team standing outside came inside the office. Inspector Chaudhary and Sub Inspector Chahal caught hold of the hands of the accused and arrested him after introducing themselves to the accused. Sudhir Kumar told that accused demanded Rs. 500/- from him and after accepting the notes the accused had kept the same inside the upper drawer of his table. At this Inspector Chaudhary asked another witness V.S. Rawat to take out the notes from the drawer and when Sri Rawat opened the drawer he took out five notes of Rs. 100/- each. Thereafter this witness and the witness V.S. Rawat compared the numbers of the recovered notes with the notes mentioned in the pretrap memo

and they tallied with each other. Thereafter right hand fingers of accused were dipped in the solution of Sodium Carbonate and it turned to rosy. Prior to dipping the fingers in the solution, it was colour-less. It is thus quite clear that this witness had witnessed the whole process of accepting bribe by the accused from Sudhir Kumar. This witness has been cross-examined at length but nothing incriminating has come out from his testimony which may render his testimony unreliable. No suggestion was put to him from the side of defence as to why this witness would depose falsely against the accused. The statement of this witness appears to be reliable and natural and there is no reason to disbelieve his testimony.

21. P.W.4, Sudhir Kumar, is the complainant. The testimony of this witness on the point of demonstration of trap is consistent. On the point of demand and acceptance of bribe, this witness has stated that he along with witness Pratap Singh Rawat had reached the office of accused riding on the scooter and other team-members had come in staff car of CBI. He and witness Pratap Singh Rawat reached near the chamber of accused K.C. Verma. He went inside the office and Pratap Singh Rawat stood 10 to 15 feet behind the office. After reaching the office, he paid Namesty to accused and then talked about security release. At the accused demanded a sum of Rs. 500/-. At that time he was sitting on his chair. This witness has not stated about the theory of having talks between him and the accused and coming out of the office. Suggestion has been put to this witness in the cross-examination that he had brought out the accused from his office after catching hold of his hands, and in the mean time another witness had kept the notes in the drawer after entering from the back door. In the cross-examination this witness has deposed that when they reached the office of the accused, no one was taking tea in its vicinity and some people were there. In the office campus Gardner was doing his work and some other persons were also there. In the office of the accused there were two tables. Babu Ram Assistant was not in the office at that time. This witness further deposed that there was a door at a distance of about 4-feet from the table and in other side of the table there was also a door. This door was in the middle of two tables and from this door one can come out through backside room. The statement of this witness also seems to be plausible. It may be that when this witness entered the room of accused, the accused could have come out in order to see as to whether there is some one nearby to witness the demand and acceptance of bribe and this may happen for a short period and that may be the reason that the complainant P.W.4, has denied the suggestion that he brought out the accused by catching his hands and this peeping out by accused and following the accused by Sudhir Kumar, gave an impression to witness P.W.2, Pratap Singh Rawat that both the complainant and accused came outside. Any how, omission of this fact in the statement of P.W.4, Sudhir Kumar, do not brush-aside the trustworthy and reliable testimony of witness P.W.2, Pratap Singh Rawat and P.W.4, Sudhir Kumar, on the point that the accused demanded a sum of Rs. 500/- as bribe from the complainant and complainant gave it to the accused and the accused has

accepted the same.

22. Learned counsel also attacked the authenticity of independent witnesses P.W.2, Pratap Singh Rawat and P.W.3, V.S. Rawat, by saying that these are the pocket witnesses of C.B.I. hence no reliance could be placed on their testimony. He has relied upon the judgment of G.V. Nanjudiah versus State (Delhi Administration) reported in 1987 CAR 294 (SC) 294.

23. In the above cited case two witnesses R.L. Verma and R.N. Khanna were collected by Dy.S.P. to witness the acceptance of bribe by the accused and recovery of bribe from him. Witness R.N. Khanna has categorically admitted in his cross-examination that he had earlier joined three or four such raids for traps organized by the C.B.I. Both these witnesses were working in the same office and both of them were very much known to the police and for the above reason the Supreme Court had not termed them to be independent witnesses.

24. The position in the instant case is different. No suggestion has been given to these witnesses from the side of defence that they are pocket witnesses of C.B.I. Had it been so, the defence could have very well produced evidence or could have given suggestion that these are the pocket witnesses of C.B.I. and they also participated in many other raids organized by CBI also. Even otherwise the testimony of these witnesses is natural. They have specifically deposed that on the instructions of Regional Manager, they had come to retiring room no.5 of Railway Station. On this point the assertion of counsel for C.B.I. is that Regional office of Punjab National Bank Haridwar is nearer to the retiring room of Railway Station and at odd hours these witnesses could have been procured easily and that was the reason that the Regional Manager on the request of C.B.I. had instructed them to participate in the trap. The participation of these witnesses cannot be doubted in any manner. The above submission of learned counsel for appellant has also no substance.

25. Learned counsel on behalf of appellant also contended that there was no occasion for the accused to make a demand of illegal gratification from the complainant, as the security could be refunded only after six months of completion of work and after the ''no dues certificate'' is prepared and ''no dues certificate'' was issued to the complainant after completion of contract works.

26. The case of complainant Sudhir Kumar is that after completion of works of two contracts he was given payment of final bills. The payments of final bills were prepared by accused. He had deposited ''no dues certificate'' in the office of Deputy General Manager after obtaining the same from C.I.S.F. There is no need to obtain order for obtaining ''no dues certificate'' and after obtaining form from office clerk it is deposited in the office. Ext. Ka.4 is the letter written on behalf of Dy. General Manager, in respect of contract No. 57/FCX/CA/95-96 dated 20-8-1995 in respect of issuance of ''no demand certificate'' and Ext. Ka.18 is the ''no demand certificate'' issued in respect of contract agreement No. 61/CF-II/CA/93-94 dated 12-12-1993. Paper Ext. Ka.13 is the application for refund of

security in respect of contract agreement No. 61/CF-III/C-A/93-94 dated 20-12-1993. It was made on 20-8-96. The date of start of this work was 20-12-93 and date of completion was 19-6-94. The another application for refund of security is Ext. Ka.14 which was moved in respect of contract No. 57/F-C.X./CA /95-96 dated 31-5-95. It was also moved on 20-8-1996. The date of start of work was 2-8-95 and date of completion was 1-12-95. The complaint Sudhir Kumar has deposed that he had given these applications to accused on 20-8-96. He had not taken their receipt, as no receipt was being given. This witness has deposed that he had reached to the office of accused at 11.00 am and requested him to recommend his security released at this the accused had asked him to pay a sum of Rs. 500/- as bribe otherwise he would not make recommendation. He further deposed that he made its complaint to the D.G.M. verbally and the complaint was filed on 30-8-1996. The deposition of P.W.5, Sri Arun Kumar is important on this point. This witness has deposed that in the year 1995-96 he was Deputy Manager in BHEL Haridwar. The duty of accused was to check the forms of security release and after processing the same to send them to this witness. This witness used to check the security forms from the measurement book (in short M.B.) and then forward the same to Deputy General Manager. This witness has categorically stated that security forms Ext. Ka. 13 and Ka.14 were not received by him from accused K.C. Verma. This witness also proved the contract agreements given to the complainant. This witness has stated that actual date of security release becomes due after six months of completion of contract work. Contractor files application for security release on prescribed form. At that time these forms were given to contract on his demand but now application is given for obtaining these forms. To obtain ''no dues certificate'' letter was written on a prescribed form and this work was entrusted to Clerk Kali Ram and he was authorized to do that work. Some other clerk could also do that work. He has also deposed that without ''no dues certificate'' security could not be released. This witness has denied the suggestion that Sudhir Kumar had noted wrong dates on the applications with a view to falsely implicate the accused. This witness also deposed that he used to sit in Administrative Block. Besides him accused and one another officer used to sit in that office. The peon opens the doors of office at 7.00 a.m. This witness has denied the suggestion that he is giving false statement in the pressure of C.B.I. Thus, from the testimony of this witness, it is quite clear that the complainant had every opportunity to obtain security refund forms and to present the same before the accused and the accused/appellant had to make his recommendation after checking the same from the M.B. The contractor/complainant had also opportunity to obtain the ''no dues certificate'' from CISF. The case of C.B.I. is that the files pertaining to contract agreements No. 57/FCX/CA/WO/95-96 dated 20-8-95 and No. 61/CF-III/CA/WO/93-94 dated 20-12-93 were recovered from the office of accused and the security release applications were recovered from the paper basket placed on the office table of accused and seizure memo Ext. Ka.8 was prepared in presence of witnesses pertaining to security release applications. This seizure memo bears the signatures of witnesses V.S. Rawat, Pratap Singh Rawat, Sri P.K. Chaudhary as well as the signature of accused taken as token of receipt. The M.B. and files relating to contract agreements were seized from the accused and seizure memo Ext. Ka.11 was prepared and signature of accused were obtained in token of receipt of its copy. It is further case of C.B.I. that the office of Administrative Block was locked and it was by accused himself.

27. The learned counsel for the accused/appellant also submitted that the accused/appellant has been falsely implicated in this case due to enmity as the accused/appellant had written letters Ext. Kha.1, Kha.2 and Kha.3 to the complainant to take action against him.

28. A plain reading of these aforesaid letters it transpires that these letters have been written to the complainant in routine and it has been instructed in the letters Ext. Kha.1 and Kha.2, written by accused to complainant, that the complainant should complete his contract work within stipulated period otherwise action would be taken against him in terms of agreement. Letter Ext. Kha.3 has been written by Sri G.L. Asawa, to accused in the same terms and he was instructed that in case work is not completed action would be taken against him. Therefore, from the above letters it cannot be concluded that the complainant Sudhir Kumar had enmity with the accused. The another document Ext. Kha.4 is so called complaint written by Smt. Angoori Devi wife of accused to the S.P. Haridwar. This complaint is dated 8-9-95. A perusal of this complaint it transpires that Smt. Angoori Devi had complained in it that the contract Sudhir Kumar is working under her husband and often he used to quarrel with her husband and on 8-9-95 at about 8-00 am he told her that if her husband had interrupted in his contract work he would be killed. The accused/appellant has also examined his wife Smt. Angoori Devi as D.W.1 to prove the enmity of the complainant against the accused. Smt. Angoori Devi has deposed that she had sent the complaint to S.P. Haridwar through registered post. She has proved complaint as well as postal receipt ext. Kha.4 and Kha.5 respectively. This witness also deposed that when C.B.I. had brought her husband to her house Sudhir Kumar was not with them and she had also wanted to give copy of complaint to them but they did not accept it and then she sent its copy to C.B.I. Dehradun. However, it is not clear what happened to the aforesaid complaint, whether any case was lodged against the complainant or not and the defence has not tried to summon some one from the office of S.P. Haridwar, in order to prove the truthfulness of the complaint and from this factum also it can not be inferred that really the complainant had threatened Smt. Angoori Devi on the date of aforesaid complaint and he had enmity with the accused and due to that enmity he would have falsely organized the CBI trap.

29. Learned counsel for the accused/appellant also pointed out that the prosecution has not submitted the G.D. entry relating to rawanagi of C.B.I. Officers from their headquarter and the G.D. entry relating dispatching the trap-kit from Dehradun to the place of trap has also not been produced and proved

and non-proving of the aforesaid G.D. entries, it shall be presumed that the trap-kit was not dispatched from the headquarter to the place of trap and the C.B.I. Officers were also not present at the retiring room of Railway Station Haridwar.

30. In reply to above query, learned counsel for C.B.I. has contended that work of C.B.I. Officers is not to maintain law and order and their work is purely of investigating nature and no G.D. entry is made for their departure to any place and they simply have to submit their programme for approval.

31. The statement of P.W.6, Sri P.K. Chaudhary, is important. He has stated in his statement on oath on 30-8-1996 constable Kalam Singh and Bhairav Dutt Karnwal had come to him with trap-kit in the night from Dehradun. In the night of 30-8-1996 the S.P. C.B.I., Dehradun had also telephoned him that tomorrow morning Sudhir Kumar would meet me and would give complaint in the matter of bribe. Once it has been proved by cogent and reliable evidence of eye witnesses, Pratap Singh Rawat, V.S. Rawat and Sudhir Kumar that pre-trap proceeding was demonstrated at retiring room of Railway Station, Haridwar, then it is hardly important that from where the pre-trap kit was brought there, particularly, the defence has not suggested that the trap-kit was brought there from somewhere else and the only inference that could be drawn is that the pre-trap kit was brought from Dehradun by the constables, as is the case of C.B.I.

32. Learned defence counsel also pointed out that constable Kalam Singh had not signed the pre-trap memo hence his presence at the time of pre-trap is doubtful and the theory of trap-kit is also doubtful.

33. P.W.6, Sri P.K. Chaudhary has admitted this fact in his cross-examination that signature of constable Kalam Singh is not on pre-trap memo, but he has denied this suggestion that his signature could not be obtained as he was sent to the office of accused in order to place the notes in his drawer. This witness also deposed in his cross examination that during pre-trap proceeding constable Kalam Singh had applied the P.P. Powder and pretrap memo was prepared in his presence. P.W.3, Sri V.S. Rawat has deposed in his examination-in-chief that the solution of sodium carbonate was prepared by constable Kalam Singh and he had dipped fingers of this witness in that solution during pre-trap proceeding. P.W.2, Pratap Singh Rawat, also admitted this fact in his cross-examination that a constable was also present during pre-trap proceeding. Further the recovery memorandum Ext. Ka.6 was prepared on the same day at 9 A.M. and this document bears the signatures of Kalam Singh. It appears that constable Kalam Singh did not sign the pre-trap memo but he was present there as is clear from the statements of the witnesses and mere non-signing the pre-trap memo by constable Kalam Singh it does not mean that he was not present there and this fact does not demolish the prosecution case.

34. Learned counsel for the accused/appellant also contended that there are serious contradictions in the evidence of the witnesses on the point of organizing pre-trap proceedings, on the point of recovery of M.B., files of contract

agreements as well as security refund forms from the possession of accused as well as on other points, and the entire version of prosecution becomes highly doubtful and the witnesses produced in the case are interested witnesses and their testimony should be discarded. In support of his contention, learned defence counsel has cited the following case-laws:-

(1) Har Bharosey Lal versus State of U.P. (HC) XXV 1988 ACC 187.

(2) State of Andhra Pradesh vs. T. Venkatshwara Rao reported in [XLVIII 2004 ACC 662] (Supreme COURT)662.

(3) State of U.P. Vs. Jagdish Singh Malhotra, reported in 2003 Supreme Court Cases (Cri) 1008.

(4) M. Abbas vs. State of Kerala, reported in 2002 Supreme Court Cases (Cri) 1270.

(5) C.M. Girish Babu vs. CBI, Cochin, High Court of Kerala, reported in (2009) 2 Supreme Court Cases (Cri.) 1.

(6) State of Kerala and another versus C.P. Rao, reported in (2011) 2 Supreme Court Cases (Cri.)1010.

(7) Panalal Damodar Rathi vs. State of Maharashtra, reported in 1980 Supreme Court Cases (Cri.) 121.

(8) M.K. Harshan vs. State of Kerala, reported in 1997 Supreme Court Cases (Cri.) 283.

(9) State of T.N. vs. Krishnan and another, reported in 2003 Supreme Court Cases (Cri.) 1231.

(10) Ganapathi Sanya Naik Vs. State of Karnataka, reported in (2007) 3 Supreme Court Cases (Cri.) 541.

35. I have gone through the above cited rulings.

36. In the case of Har Bharosey Lal versus State of U.P. (HC) XXV 1988 ACC 187, there was no eye witness of bribe taking, out of two independent search witnesses only one was examined and the sanction to prosecute the accused also not by competent authority.

37. In the case of State of Andhra Pradesh vs. T. Venkatshwara Rao reported in [XLVIII 2004 ACC 662] (Supreme COURT) 662, it has been held by Apex Court that there was no occasion to demand of bribe by the accused and further the prosecution case was found highly improbable as no reasonable man placed in position of accused respondent would agree to accept bribe in present of the witness who was admittedly on inimical terms with the accused and the money was recovered from under the mattress of the accused and the explanation from the side of accused was that the money had been kept under the mattress in his absence and when he entered the house the witness had shaken phenolphthalein

treated hands with him.

38. In the case of State of U.P. Vs. Jagdish Singh Malhotra, reported in 2003 Supreme Court Cases (Cri) 1008, the story of taking bribe was doubtful, as the accused had denied the handling or receiving of tainted currency notes and stated that he shook his hand with the officers and phenolphthalein crystals could have come on his hands during that time. It was further held that the witnesses examined at the trial were interested witnesses which cast doubt on genuineness of the prosecution case, probabilises the defendant version and creates an impression that the Union and its members could have falsely implicated the respondent.

39. In the case of M. Abbas vs. State of Kerala, reported in 2002 Supreme Court Cases (Cri) 1270, it has been observed that accused had admitted seizure and recovery of currency notes from his possession in the trap but he explained that the amount had not been received by him as bribe, but for the purpose of giving the same to another contractor who had completed the work of removing bump from the road which otherwise was required to be done by P.W.2 and P.W.2 lateron was declared hostile confirming the explanation given by the accused/ appellant. It has also been held that presumption u/s 4(1) of the Act is a rebuttable presumption which is attracted by offences U/S 161 I.P.C. or U/S 5(1)(a) or (b) and not attracted by offences U/S 5(1)(d) r/w S. 5(2). Defence case is required to be proved only by preponderance of probability. The explanation given by accused was found to be quite plausible and he was acquitted.

40. In the case of C.M. Girish Babu vs. CBI, Cochin, High Court of Kerala, reported in (2009) 2 Supreme Court Cases (Cri.) 1,it has been held that burden of proof on accused under S. 20 is not the same as the burden placed on prosecution to prove case beyond reasonable doubt. Accused can rebut charge either through cross-examination of prosecution witnesses or by adducing reliable evidence.

41. In the case of State of Kerala and another versus C.P. Rao, reported in (2011) 2 Supreme Court Cases (Cri.)1010, it has been observed by Hon?ble Apex Court that when there is no corroboration of testimony of complainant regarding demand of bribe by accused, it has to be accepted that complainant?s version is not corroborated and, therefore, evidence of complainant cannot be relied on.

42. In the case of Panalal Damodar Rathi vs. State of Maharashtra, reported in 1980 Supreme Court Cases (Cri.) 121, it has been held that on facts, there was no corroboration of the testimony of the complainant regarding the demand for money by the appellant. On this crucial aspect herefore, it has to be found that the version of complainant is not corroborated and, therefore, the evidence of the complainant on this aspect cannot be relied on.

43. In the above cited case of M.K. Harshan vs. State of Kerala, reported in 1997 Supreme Court Cases (Cri.) 283, accused was held in a trap and tained money

was recovered from his drawer without his knowledge and evidence of witnesses was contradictory on this point, therefore the appellant was held to be entitled to benefit of doubt.

44. Further, in the case of State of T.N. vs. Krishnan and another, reported in 2003 Supreme Court Cases (Cri.) 1231, the tainted money was recovered from under a pair of trousers lying on a cot. The accused version who was in bathroom, and when he came out he found witnesses already sitting on the cot and the raid party suddenly appeared and picked up the amount from under the pair of trousers, there was no dispute, regarding above facts, hence it was held that accused was rightly acquitted.

45. In the last cited case of Ganapathi Sanya Naik Vs. State of Karnataka, reported in (2007) 3 Supreme Court Cases (Cri.) 541, accused who was village Accountant demanded bribe money for effecting mutation entries in revenue records. Trap was laid. Currency notes smeared with phenolphthalein powder were put on office table of accused and appellant then placed some files on the currency notes. Trial court held that evidence of pancha witness and complainant with regard to recovery of cash was not believable and that defence version that money had been put under the files on the table surreptitiously without knowledge of appellant appeared more plausible and worthy of acceptance and the accused/appellant was acquitted.

46. Thus, it is quite obvious that the facts of above cites cases are totally different than the facts of case at hand and these rulings are of no help to the accused/appellant herein. As discussed in the earlier part of this judgment, the trap was done after completing all formalities in the presence of two independent witnesses, Pratap Singh Rawat and V.S. Rawat. The testimony of the witnesses is consistent with each other. If there are some minor contradictions in the statements of witnesses it is settled law that minor contradictions are bound to occur, otherwise if the trap is tainted one, then there may not be occasion for minor contradictions to occur, as the witnesses are tutored in that situation.

47. Learned counsel for the C.B.I. has submitted that in the instant case it has been proved by cogent and reliable evidence that there was voluntary and conscious acceptance of money by accused/appellant from complainant Sudhir Kumar, and 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 cases and circumstances obtained in the particular case and that burden was not discharged by the appellant in this case. In support of his contention learned counsel has cited before me the case of B. Noha versus State of Kerala and another, reported in (2006) 12 SCC 277.

48. I have gone through the above cited case. In para 10 and 11 it has been observed as under:-

10. The evidence shows that when P.W.1 told the accused that he had brought the money as directed by the accused, the accused asked P.W.1 to take a 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 v. State of Maharashtra as follows: (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 that 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 ''gratification'' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.

11. 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 collected from P.W.1. It was held in the decision in (2000) 9 SCC 752 in the case of State of A.P. v. Kommaraju Gopala Krishna Murthy , that when an 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.

49. In the instant case, this fact has been fully established by the evidence of P.W.2, Pratap Singh Rawat, Pancha witness, evidence of another independent witness V.S. Rawat coupled with the evidence of complainant and other members of trap-team that the amount of Rs. 500/- was passed to the accused and he had accepted the same then the burden was on him to establish that it was not by way of illegal gratification. But the burden was not discharged by the accused. Rather he has taken different stand. On his behalf different suggestions were given to the witnesses. P.W.2, Pratap Singh was given suggestion that signatures of both the constables were not obtained due to the reason that they had planted money in the drawer of the table of accused and fled away from there. Another suggestion was given to P.W.2, Pratap Singh Rawat, that when the fingers of accused were dipped in the solution and all the persons were busy to see it, in the mean time some member of the team had planted money in the drawer of the accused. Third suggestion was also given to this witness that when the accused had come out with the complainant, some member of the team planted money in the drawer of the accused. This witness has categorically denied the above suggestions. Thus, it is quite clear that the defence has not discharged its

burden.

50. So far as the sentences awarded to the accused/appellant by the learned Special Judge, are concerned, the same should be reduced, considering the age of more than 66 years of accused/appellant, the financial status of the accused/ appellant, as well as the amount taken in bribe by the accused, and in the facts and circumstances of the case in my opinion a sentence of six months R.I. U/S 7 of Prevention of Corruption Act and a fine of Rs. 1000/- and in default of payment of fine to undergo R.I. for six months, and u/s 13(1)(d) read with Section 13(2) of the Act, a sentence of one year?s R.I. and to pay a fine of Rs. 2,000/- and in default of payment of fine to undergo R.I. for six months, shall meet the ends of justice.

51. In view of discussions made above, I do not find any illegality and infirmity in the impugned judgment and order of conviction, passed by the learned Special Judge, CBI/ Anti-Corruption, Dehradun. However, the sentences awarded against the accused/appellant are liable to be reduced.

52. The appeal is dismissed. However, the order of sentence passed by trial court is modified and instead the accused/appellant is sentenced to undergo six months R.I. U/S 7 of Prevention of Corruption Act and to pay a fine of Rs. 1,000/- and in default of payment of fine to undergo R.I. for six months and he is further sentenced to undergo R.I. for one year U/S 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, and to pay a fine of Rs. 2,000/- and in default of payment of fine to further undergo R.I. for six months. However, all the sentences shall run concurrently.

53. With the above modification in the sentence, the judgment and order of conviction passed by learned Special Judge, is confirmed.

54. The accused/appellant is on bail. His bail bonds are cancelled and sureties are discharged. He shall be taken into custody forthwith in order to serve out the sentences passed against him.

55. Let the record of the case be transmitted to the trial court concerned, forthwith.

