

(2011) 07 DEL CK 0225

In the Delhi High Court

Case No : Criminal Appeal No. 826 of 2004

Nepal Singh Rawal

APPELLANT

Vs

CBI

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 428

Evidence Act, 1872 — Section 3

Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 7

Citation : (2011) 185 DLT 479 : (2011) 3 JCC 2278

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Sandeep Sethi and Anurag Jain, for the Appellant; A.K. Gautam for CBI and Neeraj Kapoor, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—The instant appeal is being filed against the judgment/order dated 27.10.2004 of Special Judge wherein the Appellant was convicted to rigorous imprisonment for two years and to pay a fine of Rs. 25,000/- for the offence punishable u/s 7 of the PC Act. In default of payment of fine, he shall undergo simple imprisonment for three months each. Convict is further sentenced to rigorous imprisonment for three years and to pay a fine of Rs. 25,000/- for the offence punishable u/s 13(2) read with 13(1)(d) of PC Act. In default of payment of fine, he shall undergo simple imprisonment for six months each. It is further directed that all the substantive sentences shall run concurrently and period of detention already undergone during investigation/trial of the case, if any, shall be set off u/s 428 Code of Criminal Procedure

2. The essence of the allegation against the Appellant is that, working as an Assistant Collector, Grade-II, Recovery Wing, Delhi Development Authority, he was pursuing proceedings against M/s. Pragati Construction Company for recovery of ground rent for the sum of Rs. .77,44,000/- and had issued arrest

warrant against the owner of the said company. It is further alleged that the Civil Judge had stayed the recovery proceeding and directed the DDA to issue demand notice as per the order of the Financial Commissioner and that the Appellant demanded Rs. .10,000/- "for complying with the said order of learned Civil Judge".

3. The charge sheet was filed, wherein, the Appellant has been shown in Column No. I, as accused whereas his son namely Yash Pal Rawal and Lalu Sahu (juice vender) are shown in Column No. 2.

4. The Trial Judge has framed Charge vide its order dated 22.07.1998, against the Appellant as under:

Firstly you Nepal Singh Rawal being a public servant while working in the capacity of Assistant Collector, Grade-I DDA on 15-10-95 at the Office of M/s Pragati Construction Company, Nehru Place, New Delhi demanded illegal gratification of Rs. 10,000/- from the complainant Satbir Singh as a motive or reward for accepting the ground rent as per the order dated 31-1-95 of the Court of Shri Rakesh Garg, Civil Judge, Delhi and later on you asked complainant Satbir Singh to pay Rs. 5,000/- out of the demanded amount on 20-10-95 and to pay balance of Rs. 5,000/- on completion of the work. Further on 27-10-95 at about 12.00 Noon you reiterated your demand for Rs. 5,000/- on telephone and directed complainant Satbir Singh to pay you demanded amount on 28-10-95 at about 10.00 AM at Nagar Dass Tea Stall, ITO New Delhi and in furtherance of your aforesaid demand you on 28-10-95 in between 12.10PM to 12.40PM at ITO New Delhi demanded illegal gratification of Rs. 5,000/- from the complainant and accepted the same through Shri Lalu Sahu who accepted aforesaid amount from the complainant at your direction. Thereby you have committed an offence punishable u/s 7 of the P.C. Act, 1988 and within my cognizance.

Secondly, you Nepal Singh Rawal being a public servant while holding the office of Assistant Collector, Grade-I Recovery Wing, DDA, INA, Vikas Sadan on 28-10-95 in between 12-10PM and 12-40PM at ITO, Delhi by corrupt and illegal means and by abusing your position as such public servant obtained for yourself pecuniary advantage to the extent of Rs. 5,000/- without any public interest thereby committed an offence punishable u/s 13(2) r/w 13(1)(d) of the PC Act, 1988 and within my cognizance.

5. The Appellant pleaded not guilty.

6. The prosecution has examined nine witnesses, whereas, the Appellant produced three defense witnesses.

7. The Trial Judge has mainly relied upon the following witnesses:

PW 1 Sh. K.S. Chabra who proved phenolphthalein test.

PW 2 Satbir, who has proved complaint.

PW 4 B.R. Gupta, Partner in Pragati Constructions and Employer of PW 2 Satbir.

PW 5 R.K. Agarwal, shadow witness.

PW 6 Uday Kumar, Punch Witness.

PW 8 R.S. Tokus, first IO who laid the trap.

PW 9 Mrs. Asha Badola, second IO of the case.

8. Learned Counsel for the Appellant submits that pursuant to complaint made to CBI on 27.10.1995 by PW2 Sh. Satbir Singh (who claimed to be an employee of the said company), CBI formed the trap team. It is further alleged that in addition to CBI's/witness, PW-5 and PW-6 were also summoned as independent witness by CBI on 26.10.1995, i.e. even before the lodging of the complaint dated 27.10.1995. PW-6 recovered a bundle of currency notes from Lalu Sahu (Juice Vendor). Subsequently, at the time of recovery, even the said punch witness PW-6 was not aware nor told that the said money, was paid to Lalu Sahu by PW2 Sh. Satbir Singh (Complainant) as demanded by the Appellant. Although it is alleged that PW6 had gone to the trap place, had taken appropriate position, waiting to see the signal from the shadow witness PW5.

9. Mr. Sandeep Sethi, Sr. Advocate, appearing for the Appellant, raised few points in favour of the Appellant as under:

- (i) No recovery affected from the Appellant.
- (ii) No demand/acceptance of the Appellant.
- (iii) No forensic examination of the audio tapes, recorded by the CBI.
- (iv) No voice match of the Appellant, as no voice sample of Appellant was ever taken.
- (v) No stay/no proceeding in any Court, which falsify the basis of complaint.
- (vi) Sealed Cash box neither produced nor exhibited.
- (vii) No phenolphthalein test on the Appellant.
- (viii) The scooter used in the offence, not seized.
- (ix) The son of the Appellant was not taken in custody.
- (x) Lalu Sahu (Juice Vendor) from whom the recovery of G.C. Notes got effected, was not arrested nor made accused and nor produced as witness.

10. Now, I will discuss the depositions made by the witnesses which led to conviction of the Appellant:

11. The complainant PW2 Sh. Satbir Singh, made a complaint Ex.PW2/A dated 27.10.1995 to CBI, Anti Corruption Branch, Lodi Road, New Delhi as under:

He was working as Field Officer in M/s Pragati Construction Company at Devika Tower, Nehru Place, New Delhi. The aforesaid plot of the company was allotted by

DDA in the year 1980. On 14.01.1995, the Petitioner being an Assistant Collector, Gr.-II, Recovery Wing DDA, INA Vikas Sadan, had sent a recovery demand for Rs. .44,85,000/-. The said demand was against the ground rent. They challenged before Sh. Rakesh Garg, Civil Judge, Delhi, and on 31.01.1995 the Court issued order for recovery on the order dated 30.10.1992 of the Financial Commissioner. The aforesaid order was served to DDA. On 21.09.1995, Sh. N.S. Rawal, again sent a demand of Rs. .77,44,000/- which was to be deposited till 09.10.1995. He contacted Sh. N.S. Rawal on 09.10.1995 and requested him in writing that the ground rent be charged as per the order of the Court. Sh. Rawal refused to obey the order of the Court, said that the recovery demand has to be deposited. On 15.10.1995, Sh. Rawal came to their office and said that he will comply with the order of the Court, if they give Rs. .10,000/- as a bribe. Further he said, Rs. . 5,000/- should be given to him in advance, rest can be given after the work is done. Sh. Rawal had made telephonic call on 20.10.1995, in the evening at 4.30 p.m., to come with money at Nagardas Tea Vendor, ITO. Accordingly, he informed his employer Sh. D.R. Gupta, who refused to give bribe. Today, i.e. 27.10.1995 at about 12 "O'clock, Mr. Rawal told on phone that tomorrow on 28.10.1995 at about 10 "O'clock he should reach at Nagardas Tea Vendor, ITO with Rs. . 5,000/-, failing which, he will seal their building. They did not want to give bribe, therefore, the legal action be taken against Sh. N.S. Rawal, Assistant Collector, Gr.-II, Recovery Wing, Vikas Sadan, office at INA, New Delhi, DDA.

12. PW4 Sh. D.R. Gupta deposed that he is a partner of M/s. Pragati Construction Company, 6, Devika Tower, Nehru Place, New Delhi. Sh. Satbir Singh used to look after the Court matters relating to Ms. Pragati Construction Company. There were certain recoveries pertaining to the ground rent pending against 6, Devika Tower. On 20.10.1995, Satbir Singh informed him that there was a stay order from the court against the DDA's recoveries, even then, Nepal Singh Rawal was demanding Rs10,000/- as gratification in relation to those recoveries. (Objected to). He directed Satbir Singh to lodge a complaint with CBI, accordingly, on 27.10.1995 he gave Rs. 5,000/- to Satbir Singh to be used for the trap.

13. In cross-examination, he states that it is correct that there was a recovery of ground rent for Rs. 77,44,900/- against his firm. However, that recovery was paid by the orders of the Court. The stay order against the said recovery was from the Court of Civil Judge, Tis Hazari, Delhi. He did not hand over the copy of the said stay order to CBI during investigation. If at all it was handed over to CBI, it must have been done by my "Karinda" Satbir. He did not remember, therefore, he could not admit or deny that in realization to aforesaid ground rent, they fought the litigation upto Supreme Court. It is incorrect to suggest that they lost their case in relation to said recovery upto Supreme Court or that thereafter, recovery proceedings were initiated. Satbir did not tell him that there were warrants of arrest against him in relation to recovery proceedings of the ground rent. It is correct to suggest that he had come to know that on 19.10.1995 and 20.10.1999 his warrants of attachment could not be executed because of lack of

identification. Therefore, accused had passed an order that he himself would go along with "Bailiff" to execute the warrants issued against him, to attach in the recovery proceedings. There was one Shambhu Ram employee in M/s. Pragati Construction Company. He did not know, therefore, he could not admit or deny that the said Shambhu Ram was a retired CBI Officer. He did not know if the recovery notices relating to the ground were received by Shambhu Ram. It is correct that in relation to the impugned recovery of ground rent, previously also, officials of the office of Asstt. Collector were trapped on the complaint of the said Satbir. Again said, the aforesaid trap was not in relation to the impugned recovery but it was a different recovery of ground rent. However, said ground rent recovery was in relation to the ground rent of 6, Devika Tower, Nehru Place, New Delhi.

14. Further, he stated that on 20.10.1995, Satbir informed him about the demand of bribe on telephone. He received said telephone calls from Satbir in his office. He did not talk, from where he called. On the receipt of said telephone calls, he directed Satbir to come to the office. He did not know, where the complaint was written by Satbir. It is incorrect to suggest that on 20.10.1995 he did not attend his office or that he was absconding to avoid the warrant of his arrest. He did not remember whether or not he mentioned in his statement u/s 161 Code of Criminal Procedure that Satbir informed him about the demand of bribe on telephone. (witness is confronted the statement Ex. PW4/DA, where it is not mentioned that information was conveyed by Satbir on telephone or not). Further, he states that it is correct to suggest, he directed Shambhu Ram to accompany the complainant to CBI office for submitting the complaint.

15. PW5 R.K. Aggarwal, deposed that on 27.10.1995, he along with his colleague Uday Kumar visited CBI office as per the instructions of their Business Office Mr. Gupta. He met one Inspector of CBI whose name he did not remember. There, he was introduced to one Mr. Satbir and his complaint was shown to him which he went through and asked certain questions to Satbir for ascertaining the genuineness of his complaint. It was revealed during discussion with Satbir that one DDA officer was demanding `10,000/- as bribe, and now it was settled, the sum of `5,000/- which was to be paid on the next date. A telephone conversation between complainant and the officer of DDA was arranged which was recorded in their presence. The time of giving bribe was fixed at 12.00 noon on 28.10.1995. They were discharged for that day, with directions to come on next date on 28.10.1995 at 10.00 am. Accordingly, he reached CBI office, Satbir was already sitting there, who had brought `5,000/- with him. The numbers of G.C. Notes were noted down, the numbers were confirmed and one chemical powder was applied on those. The tainted G.C. Notes were kept in the front pocket of Satbir's pant. He was directed to remain with the complainant Satbir with the directions to over-hear the conversation at C.D. Transaction. He was further directed to give signal by placing his hand on his head as soon as the transaction of bribe got completed. Thereafter, they left for the DDA office at Vikas Minar, ITO.

16. Further, he deposed that time was fixed for meeting in a hotel which was behind the Vikas Minar. They sat on the chair lying outside the hotel. While they were sitting there, two persons came on the scooter and Satbir signaled him that the person had come, to whom the bribe was to be given. Out of both the persons, who came on scooter, one person came towards them and the other young man remained seated on the scooter. Satbir wished that person "Namaskar" (that person reciprocated). That person inquired about him to which Satbir told him that he was a person known to his brother-in-law and he was to be introduced with Gupta Ji for service. Satbir asked that person that how the money was to be paid on which that person took Satbir aside towards a juice corner and he was following them. There, they had juice, thereafter, Satbir asked that person as to whom the money was to be given and how to be given. On which that person told Satbir, he should pay the money to Juice Vendor and that person directed the Juice Vendor to wrap that money in a paper and keep with him. Further, told to that Juice Vendor that after some time the young man sitting on the scooter would come, to whom he had to give the money. Satbir gave the bribe amount to that juice seller and left the juice shop. The juice seller wrapped that amount in a paper and kept the same in the cash box. As soon as, Satbir and Nepal Singh left the shop, he gave signal and on receipt of signal the other member of trap party, rushed to the spot and arrested all three including Juice Vendor, Nepal Singh and young boy who was sitting on the scooter.

17. Further, deposed that the bribe amount wrapped in the newspaper was recovered by his colleague Uday Kumar from wooden cash box. Except the tainted amount, the other amount was returned to the Juice Vendor. The numbers of those recovered G.C. notes were tallied with the numbers noted down in annexures to handing over memo. The hands of that Juice Vendor were washed in separate solution of Sodium Carbonate and both the solutions turned pink which were transferred into clean empty bottles and were sealed.

18. He deposed further that the wash of newspaper was also taken in another freshly prepared solution of Sodium Carbonate which also turned pink, it was also transferred and sealed in another clean bottle. He and Uday Kumar signed on these paper labels of three bottles pasted on them. Recovery memo pertaining to the post raid proceedings Ex.PW2/E was also prepared at the spot.

19. In cross-examination, he states, it is correct that he was also shadow witness in CBI v. Narender Singh, SI and he appeared as a witness in that case in the Court. He was a witness in four other cases of traps organized by CBI. It is wrong to suggest that he was stock witness of the CBI. The name of the Vigilance Officer, who had deputed him to join in the said raid was Mr. Gupta. He was given the order in writing. Vigilance Officer must have received requisitioned letter from CBI, he did not see that letter. He could not admit or deny, if the said letter contained his name.

20. Further, states that he had not heard the conversation on that parallel telephone. On 27.10.1995 his statement was not recorded by the CBI officials.

On 14.12.1995 transcription was prepared. Perhaps Uday Kumar was present at that time but he was not sure. The accused did not demand the money. However, he had asked the complainant to give money to the Juice Vendor by words.

21. PW6, Asstt. Manager, FCI Barakhamba Lane, CP, New Delhi, deposed that on 26.10.1995, he was directed by their Vigilance Officer to visit CBI office on 27.10.1995, R.K. Aggarwal was also with him who reported to CBI office along with him. In CBI Office, they met one Inspector Tokas. There, they were told that one complainant Satbir Singh had lodged a complaint against N.S. Rawal for demanding Rs. 10,000/-.

22. Further, he deposed, after completion of all the pre-trap proceedings, all the trap team numbers reached Vikas Minar, ITO. On reaching there, Satbir Singh was accompanied by R.K. Aggarwal as a shadow witness. Both Satbir and R.K. Aggarwal reached near a tea stall at Vikas Minar and he took his position near the scooter stand. At about 2/2.30 pm he heard the noise from stall and found that all the CBI officials were assembled there and N.S. Rawal was present with his son. There was some scuffling. On the directions of trap laying officer, he recovered the tainted amount wrapped in a newspaper from the cash box of the owner of the Juice shop. The hand washes of juice owner was taken, which, also turned into pink colour. Similarly, wash of newspaper was also taken, which, also turned pink. The number of G.C. notes were tallied with the numbers noted down in the annexures to handing over memo and were found to be correct. Even, he was told by one of the trap team members, on whose direction, the tainted money was handed over to juice-wala by Satbir. Thereafter the CBI did all procedural rituals and took his signatures on the memo prepared.

23. This witness was recalled for further examination-in-chief, states that he had seen the G.C. notes Ex. P1 to P70, these are the same which were recovered at the spot from a newspaper lying in the cash box of the juice shop. He also had seen the washes Ex. P72 to Ex. P74 bears his signatures at Point B on all the washes bottles. The Cassette Ex. P77 was played and witness identified his voice saying "main Uday Kumar A.G.-I Head Quarter main kaam karta hoon, main CBI office say bol raha hoon".

24. PW8 R.S. Tokas, who was posted as Inspector CBI/ACB, Delhi, on 27.10.1995 deposed that the complaint dated 27.10.1995 of complainant, Satbir Singh employee of M/s Pragati Construction Company was marked to him by the then SP, Sh.V.S. K Kamudy vide endorsement Ex. PW8/A on complaint Ex. PW2/A. On receipt of this complaint, presence of two witnesses namely, Sh. R.K. Aggarwal, A.G.-I and Sh. Uday Kumar, A.G.I both from FCI, HQ, Barakhamba lane, Connaught Place, New Delhi, were procured and in their presence a tally tape recorder was fitted to telephone installed in the office of SP, CBI/ACB, Delhi. The independent witness Sh.R.K. Aggarwal, was asked to dial the telephone number of accused Nepal Singh Rawal, which, was given by the complainant Sh. Satbir Singh. After the talk was materialized, the receiver was handed over to Satbir Singh complainant, both complainant and the accused had conversation

over the telephone, which, was recorded in the new Audio Cassette fitted to the tele tape recorder. After the conversation was over, the Audio Cassette was rewinded and played to hear the conversation which indicated the demand of bribe by the accused and the accused had agreed to accept the bribe money from the complainant at 12.00 noon at ITO in the tea stall of Sh. Nagardas. The Audio cassette was again rewinded and sealed, after wrapping in a piece of cloth and was sealed with a CBI seal. The seal so used was handed over to the witness Sh. Uday Kumar for safe custody. Thereafter FIR RC No. 94 (A)/95/DLI was registered which is Ex. PW8/B bearing the signatures of the then SP, Sh. V.K. S. Kumudy at Point "A". The independent witnesses and the complainant were asked to come to the CBI office at 10.00 am on 28.10.1995. A CBI team was constituted including him consisting of Inspector R.V.S. Lohmor, Inspector S.R. Singh, Inspector S.K. Bhatti, and SI Sh. Prashad. The complainant produced a sum of Rs. 5,000/-. On his direction, Inspector S.K Bhatti treated the G.C. notes, so produced by the complainant, with Phenolphthalein powder and gave a demonstration about the reaction of Phenolphthalein powder in the solution of sodium carbonate. After completing all pre-trap rituals, the Phenolphthalein powder treated notes of `5,000/- were kept in the front side pocket of the shirt of the complainant Satbir Singh and directed him to hand over the said money to the accused on his specific demand and not otherwise. All the proceedings which took place in CBI office were recorded in handing over memo Ex. PW2/D.

25. Thereafter, the CBI raiding party reached the spot i.e. tea stall of Nagardas at ITO near Vikas Minar at about 11.45 am. The complainant Satbir Singh and independent witness Sh.R.K. Aggarwal, who was asked to act as shadow witness, sat on the chair in front of a table and the rest of raiding party members also took suitable position at about 12.10 pm. Accused came to the complainant. They both talked about 10-15 minutes and then proceeded towards ITO flyover. Independent witness also followed. All the three, then reached at a juice corner where the complainant and the accused drank juice at 12.45 pm. The independent witness Sh.R.K. Aggarwal gave signal, the CBI raiding party rushed towards the juice corner and accused N.S. Rawal was caught hold by SI Mr. Prashad and Inspector S.R. Singh from his wrists. The independent witness R.K. Aggarwal disclosed that the accused Rawal had asked the complainant Satbir to hand over the bribe money to juice-wala who after taking over the said money wrapped the same in a piece of newspaper and kept the same in his cash box. On his direction, the other witness namely, Uday Kumar recovered the bribe money of Rs. 5000/- form the cash box of juice-wala. Both the witnesses were asked to tally the number of notes, so recovered, with the numbers mentioned in the annexes to the handing over the memo. They confirmed that the numbers were same. In the meantime, the juice wala whose name was later on disclosed as Lalu Sahu was also taken into custody, washes of both of his hands were separately taken in the solution of sodium carbonate which was transferred in two separate glass bottles and marked as RHW and LHW to denote left hand wash and right hand wash, respectively.

26. Similarly, the wash of newspaper in which the money was wrapped was also taken in solution of sodium carbonate and was transferred into the separate bottle and marked as NPW to denote newspaper wash. All the three bottles were sealed with CBI seal and the both wrappers and paper label pasted on the bottles were signed by the witnesses.

27. Thereafter, the accused N.S. Rawal, Lalu Sahu and the son of accused who had also accompanied the accused on a scooter were taken into custody and the scooter on which the accused had come was also taken into custody. A recovery memo was prepared in which all the proceedings were recorded. The same is Ex.PW2/E.

28. In the cross-examination, this witness states that he did not enquire from the complainant as to where he had written this complaint Ex. PW2/A. He did not recollect, if the complainant had come to CBI office all alone or he was accompanied with anybody. One person was with the complainant but he did not recollect his name. He could not admit or deny, if the person by the name of Shambu Ram, was with the complainant, when he had come to CBI to lodge the report. He did not enquire from the complainant, if he had brought the required money for the trap or not. The raiding party reached at the spot in front of tea shop, however, the place was opened and some chairs were lying. On receipt of signal, he challenged the accused for having demanded and accepting the bribe from the complainant. The accused denied having demanded or accepting money from the complainant. (Vol.) but at the same time, the witness pointed out that the money was handed over to juice wala on the direction of the accused. The personal search of accused was not taken at that time. Since the accused had not touched the notes, therefore, he did not take the wash of the accused. The recovery memo Ex. PW2/E was written by him. It is wrong to suggest that post-raid proceeding were not conducted at the spot and that entire writing was done subsequently, in CBI office. It is further incorrect that he did not lay trap properly, fairly and honestly and that the accused was falsely arrested and involved in the case.

29. Second I.O.PW9 Ms. Asha Badola, Inspector CBI deposed that during the year 1995 she was posted as Inspector CBI/ACB, Delhi. After the trap the present case was entrusted to her for further investigation. During further investigation, she prepared a transcript of the Audio cassette which was played in presence of complainant and independent witness. The memo in this respect Ex.PW5/D was prepared which bears her signature at Point "C".

30. In the cross-examination, she states that he did not recollect the date of filing the charge-sheet. After seeing the record, she could say that charge-sheet was filed on 20.03.1997 and date of trap was 28.10.1995. It is incorrect that there was a delay of about 2 years in filing the charge-sheet, because the CBI authorities felt that it was not a fit case for filing the charge-sheet.

31. The statement of accused was recorded u/s 313 Code of Criminal Procedure

Some relevant questions and answers are reproduced as under:

Ques 9: It is further in evidence against you that on reaching there you came to complainant and witness where you inquired about witness R.K. Aggarwal from Satbir Singh and complainant Satbir Singh introduced the witness as a friend of his brother-in-law. What have you to say?

Ans: It is incorrect.

Ques 10: It is further in evidence against you that complainant Satbir Singh asked you how the money was to be paid on which you took him toward the juice corner and you and complainant were followed by shadow witness Sh.R.K. Aggarwal. Where have you to say?

Ans: It is incorrect.

Ques 11: It is further in evidence against you that on reaching the juice corner, you directed the complainant to make the payment to juice vendor and you further directed the juice vendor to wrap the money in a paper and keep with him. When have you to say?

Ans: It is incorrect.

Ques 12: It is further in evidence against you that you further told the juice vendor that the young man sitting on scooter will come to you and he should give the money to him. What have you to say?

Ans: It is incorrect.

Ques 13: It is further in evidence against you that as per your direction complainant Satbir Singh gave the tainted money to the juice vendor who wrapped that amount in a paper and kept the same in cash box and as soon as complainant and you left the shop, the shadow witness gave the pre-appointed signal to the trap team. What have you to say?

Ans: It is incorrect.

Ques 14: It is further in evidence against you that on receipt of signal the trap team reached there and apprehended you, your son and juice vendor. What have you to say?

Ans: I was falsely apprehended.

Ques 20: Why this case against you?

Ans: This is a false case. I have been falsely implicated in the present case.

Ques 21: Why have the P Ws deposed against you?

Ans: Complainant is an accomplice in eye of law. Punch witnesses have deposed due to fear of departmental action. TLO and IO are interested witnesses. Others are formal in nature.

Ques 22: Will you lead any evidence in your defence?

Ans: Yes.

Ques 23: Have you to say anything else?

Ans: I am innocent. I neither demanded nor accepted any money from the complainant.

Satbir Singh is an employee of M/s. Pragati Construction wherein the notices have been issued by DDA to the company for recovery of arrears of ground rent. DDA had issued warrant against the Director/partner Sh. D.R. Gupta (PW4). This fact has been admitted by the complainant in his statement. He is an accomplice as far as the trap by the CBI who also laid against DDA officials namely Kartar Singh and J.C. Verma and that case is pending before this Hon"ble Court. Kartar Singh was my predecessor and that case was also based on the same allegations leveled against those DDA officials as leveled against me. Therefore, the complainant is in habit of making complaints against the officials who are entrusted with the matters of recovery of ground rent. Moreover my sanction is invalid as my sanctioning authority is Vice Chairman. I was falsely implicated in the present case.

32. The accused got examined three defence witnesses.

33. The learned senior counsel appearing for the Appellant has argued:

(i) the conversation between accused and PW-2 Satbir has not proved in accordance with law, therefore it is not admissible. The law on this issue has already been settled. In JT 2011(3) SCC 429, Nilesh Dinkar Paradkar Vs. State of Maharashtra, , wherein the Supreme Court has opined as under:

"In our opinion, the veracity of the voice identification would not improve merely because a recording has been made after receiving official approval. The crucial identification was of the voice of the person talking on the tape. We are of the considered opinion that the high court has committed a grave error in confirming the conviction of the Appellant as recorded by the trial court only on the evidence of voice identification."

(ii) Audio tele tape was neither sent to FSL nor the sample of voice of the Appellant was taken for matching the voice.

(iii) PW-4 Sh.D.R. Gupta has not produced on record, the order/stay order, nor he produced any proceedings of the Court, therefore, this fact has not been proved. Even till date has not produced any Court order.

(iv) PW-5 Sh.R.K. Aggarwal shadow witness has stated the place of meeting was the hotel behind Vikas Minar Building. He has stated the wash came out, whereas, the tainted money was wrapped in paper/newspaper, therefore, there was no occasion to touch the tainted amount therefore, the story of wash is false.

(v) Only PW-6 Udai Kumar (Punch witness) talks about the meeting point at tea

stall and further he states that some noise heard at the tea stall and scuffling took place, whereas, no other witness support this deposition of PW-6. This witness did not admit that the seal was handed over to him.

(vi) Inspector R.V.S. Loh Mod, S.R. Singh and S.K. Bhati were not examined and SI Sh. Prasad not cited even as witness, therefore, not examined who could have proved the trap and recovery of tainted money.

(vii) PW-8 R.S. Tokas has deposed that the complainant and the accused talked about 10-15 minutes at Nagar Das Tea stall, therefore, proceeded to ITO flyover. No other witness supports this deposition of this witness. Therefore, he has brought a new version in the case.

(viii) Shambhu Ram, the accomplice of PW-2 who wrote the complaint as deposed by PW-2 has not been cited as witness. Without examining this witness the story of the prosecution of demanding bribe is not proved. Because, as stated by PW-2 Satbir, he remained outside the office of Rawal and Shambhu went and met the Appellant, to whom the Appellant had demanded the alleged money.

(ix) As per the prosecution story the Appellant had demanded the money to implement the order/stay order as mentioned in the complaint Ex.PW-2/A, by the complainant Satbir Singh PW-2, but no such order has ever been produced or proved. Therefore, story of the prosecution is false.

(x) The money was recovered from Lalu Sahu (Juice vender). Neither, he was made accused nor produced as witness, who would have proved the money taken on behalf of the accused.

(xi) Four places of meeting are emerged, namely, tea stall, Juice wala, hotel and towards flyover, therefore, no consistency in deposition of witnesses.

(xii) In pre-trap proceedings the PW-2 was not instructed to hand over money to Juice wala, whereas as per the prosecution story the tainted money was given to Juice wala.

(xiii) The transcript prepared on 14.12.1995 after obtaining cassettes from malkhana, the law on this point reads as under:

The law on the admissibility of tape recorded versions is well settled. In Ram Singh and Others Vs. Ram Singh, with whom Sabyasachi Mukharji, J agreed, laid down the following tests for determining the admissibility of tape recorded version:

1. "The voice of the speaker must be identified by the maker of the other persons recognizing the voice. Where maker is unable to identify the voice, strict proof will be required to determine whether or not it was the voice of the alleged speaker.

2. The accuracy of the tape-recorded version must be proved by the maker of

the record by satisfactory evidence: direct or circumstantial.

3. Possibility of tampering with or erasure of any part of, the tape-recorded statement must be totally excluded .

4. The tape-recorded statement must be relevant.

5. The recorded cassette must be sealed and must be kept in safe or official custody.

6. The voice of the particular speaker must be clearly audible and must not be last or distorted by other sounds or disturbances.

In Ziyauddin Burhanuddin Bukhari Vs. Brijmohan Ramdass Mehra and Others, a three-Judge Bench while considering the question whether the Appellant was guilty of promoting feeling of enmity between two sections of the society, examined the question of admissibility of tape recorded speech, referred to the judgment in R.v. Maqsood Ali (1965) 2 All ER 464 and observed:

We think that the High Court was quite right in holding that the tape-records of speeches were "documents", as defined by Section 3 of the Evidence Act, which stood on no different footing than photographs, and that they were admissible in evidence on satisfying the following conditions:

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

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

(c) The subject-matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act."

(xiii) According to prosecution the money was wrapped in newspaper, whereas newspaper is not part of the judicial file.

(xiv) As alleged that on 15.10.1995 the Appellant came to the office of Pragati Construction Company at Nehru Place, whereas, being Sunday on that date the Nehru Place was closed, therefore, this story of the prosecution also false.

(xv) The complainant PW-2 Satbir does not support the prosecution story.

34. Learned standing counsel Mr. A.K. Gautam for CBI has argued and rebutted the points raised by the learned Counsel for the Appellant. Phenolphthalein Test was not conducted on the Appellant, because he did not touch the tainted notes used in the trap. The scooter used in the offence was seized vide memo Ex.PW-2/E and the same was proved by PW-8 R.S. Tokas I.O. and TLO and Yashpal Rawal, son of the Appellant was also taken into custody along with Lalu Sahu (Juice Vendor). The CBI after investigation, has put both the aforesaid persons in Column No. 2 of the chargesheet.

35. Further he submits that as regards the date of 15.10.1995 the Appellant came to the office of Pragati Construction Company at Nehru Place no doubt there was Sunday on that date. The learned Counsel has not based any specific question on this issue from any one of the witness, therefore raising this issue at this stage does not serve any purpose.

36. Further, he submits that the complainant has proved the complaint, though in the cross-examination he has totally taken the U-Turn from what he has deposed in the examination-in-chief. The court should not believe on the complainant PW2 Satbir what he had stated in the cross-examination. The complainant himself has approached the CBI office on his own and on their complaint, the CBI officer came into motion. The tainted money was recovered from one Mr. Lalu Sahu (Juice Vendor), which, he has received the amount on behalf of the Appellant. Therefore, the recovery was also fully proved. The Appellant not only demanded money when PW2 Satbir and Shambu Ram visited the office of the Appellant. He again demanded the bribe amount on telephone on 20.10.1995, the aforesaid conversations were recorded by a parallel telephone and the audio tele tape was also prepared. Therefore, it proves that the Appellant had demanded gratification from Shambu Ram PW2 Satbir as well.

37. I have heard both the learned Counsels, and gone through the evidence on record. PW-4 Mr. D.R. Gupta states in his cross-examination that it is correct that there was a recovery of ground rent for Rs. . 77,44,900/- against his fault. However, that recovery was stopped by the orders of the Court. The said order against the recovery of stay order was from the Court of Civil Judge at Tis Hazari Court. He did not hand over the copy of the said stay order to CBI during the investigation. He did not remember, therefore, he did not admit or deny in relation to said ground rent they contested litigation up to Supreme Court of India. Further, he states that the complainant Satbir Singh did not tell him that there were warrants of arrest against him in relation to recovery proceedings of the ground rents. It is correct to suggest that he had come to know that on 19.10.1995, and 20.10.1995, his warrants could not be executed because of lack of identification. Regarding Shambhu Ram, he states that there was one Shambhu Ram, employee in M/s Pragati Construction Company. He did not know, therefore, he did not admit or deny that the said Shambhu Ram was a retired CBI official. He also states that it is correct that in relation to impugned recovery of ground rent premises officials of office of Assistant Collector-I trapped on the complaint of said Satbir Singh. Again said that aforesaid rent was not in relation to impugned recovery but it was a different recovery of ground rent. However, again recovery of said ground rent was in relation to ground rent of 6, Devika Tower, Nehru Place, New Delhi. On 20.10.1995, Satbir informed him about demand of bribe on telephone. He denied to the suggestion that on 20.10.1995, he did not attend the office or that he was absconding to avoid the warrant of arrest.

38. PW-5 R.K. Aggarwal (shadow witness) in his cross-examination states that it

is correct that he was also shadow witness in a case of CBI v. Narender Singh SI, as he appeared as a witness in that case in the Court. He was a witness in four other cases of trap organized by CBI but he denied to the suggestion that he was stock witness of the CBI.

39. PW-6 Udai Kumar (punch witness) has deposed in examination-in-chief that on 26.10.1995, he was directed by their vigilance officer to visit CBI office on 27.10.1995. Further he stated that Mr. R.K. Aggarwal (PW-5) was also with him.

40. As per prosecution story, the complainant had made a complaint dated 27.10.1995 and he along with one Shambu Ram visited the CBI office on 27.10.1995 itself. Therefore, the question does not arise that the PW5 and PW6 were directed by the vigilance officer to visit CBI office, the day prior to the complaint. This version in his deposition falsify the story of the prosecution that the complainant PW2 Satbir made complaint on 27.10.1995 and visited the office of CBI on the said date. Further, PW6 has deposed when he was recalled for examination, the meeting point was fixed at Tea Stall of Nagar Dass as he heard from the audio cassette conversation. Whereas, PW5 Sh. R.K. Aggarwal deposed that the time of meeting was fixed in a hotel behind the Vikas Minar, ITO, New Delhi. They sat on the chair lying outside the hotel. In cross-examination, he has stated that he did not hear the conversation on the parallel telephone. He reached near the Tea Stall at Vikas M Inar and he took his position near the scooter stand. At about 2/2:30 PM he heard a noise at tea stall and found that all the CBI official were assembled there and N.S. Rawal was present there with his son. There was some scuffling on the direction of trap laying officer, he recovered tainted amount wrapped in a newspaper from the cash box of owner of juice shop. The hand washes of juice shop owner was taken which turned into pink colour similarly, washes of newspaper was also taken which also turned pink. He further states he was not told by any one of the trap team member on whose direction, the tainted money was handed over to juice wala by Satbir Singh (PW-2).

41. Further, PW-6 Udai Kumar has stated that the tainted notes of Rs. 5000/- were kept in front side shirt pocket of the complainant. Whereas, PW5 has stated that the tainted GC notes were kept in front pocket of pant of Satbir.

42. PW8 Sh. R.S. Tokas, first IO and Trap Laying Officer has said in cross-examination that he did not enquire from the complainant, if he has brought the required money from the trap.

43. In my opinion, keeping in view the aforesaid discussion and depositions, the prosecution has failed to establish the demand that the Appellant has demanded money and accepted the demanded money. There is no consistency in the statements of the witnesses and inter-se deposition of the witnesses. Every witness is parroting differently, therefore, there is no change in the circumstances. The Appellant has succeeded to prove that there is no sufficient material on record to convict him in the present case.

44. Learned trial judge has not properly appreciated the evidence which is in favour of the Appellant. He has gone wrong to reach at the opinion, therefore, and convicted the Appellant.

45. I, therefore, set aside the judgment dated 27.10.1994 passed by the trial judge and also set aside the order dated 29.10.2004 by which the Appellant was convicted.

46. The Appellant is hereby acquitted from all the charges made against him. I direct the Deputy Commissioner concerned to personally look into the investigation and make extra efforts to maintain the trust of the aggrieved on the police system.

47. The personal bond of the Appellant and the surety bond of the sureties stand cancelled.

48. Accordingly, the appeal is allowed.

49. I refrain to impose any cost.