(2011) 05 DEL CK 0436

In the Delhi High Court

Case No : Criminal Appeal No''s. 100 of 2002 and 102 of 2002

Shri Vijay Kumar Chadha APPELLANT

Vs

C.B.I.
 Shri Daljeet Singh Vs State (C.B.I.) RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 120B
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 20, 7

Citation : (2011) 3 JCC 1660

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Sandeep Sethi, Anurag Jain, along with Party in Person in Criminal Appeal No. 100/2002, Randhir Jain, Ruchika Jain, along with Party in Person in Criminal Appeal No. 102/2002, for the Appellant; Narender Mann, Special Public Prosecutor for the State/CBI, for the Respondent

Judgement

M.L. Mehta, J.—Both these appeals arise out of the common judgment dated 4th February, 2002 and the order dated 5th February, 2002 of learned Special Judge, Sh. R.K. Gauba, in Corruption Case No. 34 of 1993. Both the Appellants/accused were convicted vide impugned judgment u/s 120-B of the Indian Penal Code (hereinafter, for short "IPC") read with Section 7 & 13(2) of the Prevention of Corruption Act (hereinafter, for short "the Act"). They both were sentenced to RI of four years with fine of Rs. 500/- each u/s 120-B IPC read with Section 7 & 13(2) of the Act. The substantive sentences awarded were to run concurrently. In default of payment of fine, the accused were to undergo further RI of three months on each count. Both these appeals were heard analogously and are being disposed by common judgment.

2. Both the accused were employees of Municipal Corporation of Delhi (MCD). Accused Vijay Kumar Chadha (for short "VKC") was posted as Junior Engineer whereas accused Daljeet Singh (for short "DS") as peon at the material time in the building department of South Zone of MCD, Delhi.

3. The prosecution case as gathered from the records is that one house in Tughlakabad falling in South Zone and owned by Smt. Hardev Batra (the mother-in-law of the complainant PW1 and also the mother of PW2), was under some construction/repairs. Both the accused were allegedly harassing the complainant and also PW2. On one visit, accused DS came along with labourers and took away the tools of the plumber from there. While leaving he also left a word for the owner of the family to meet accused VKC in the MCD office at Green Park. Both, complainant PW1 and his brother-in-law, Naveen Kumar (PW2) called on the accused in their office where both demanded a sum of Rs. 10,000/- for allowing construction/repairs in the said property. The demand was later reduced to Rs. 7,000/-on PW1 and PW2 expressing inability to arrange Rs. 10,000/-. The accused instructed PW1 to come with the money in the office before noon on 17th November, 1992. Complainant PW1, instead, approached CBI office and made a complaint (Ex.PW1/A) seeking necessary action. The matter was registered and directed to be investigated by S.K. Peshin (PW9), who was also the Trap Laying Officer. As instructed, PW1 came along with the bribe money worth Rs. 5,000/- which he brought in the shape of 100 currency notes of Rs. 50 denomination. Trap party was constituted, in which Mahesh Chand Pathak (PW4), a parcel Clerk of Northern Railway and Jagdeesh Prasad (PW5), Head Postman, Lodhi Road, were requisitioned for the purpose. They were introduced to the complainant (PW1) and other members of the trap party. The numbers of currency notes brought by complainant (PW1) were noted down. The notes were given usual phenolphthalein powder treatment. The practical demonstration about the manner in which powder was used and to react was given. Tainted currency notes were returned back to the complainant with a direction to pass it to the accused only on specific demand. PW4 Mr. Pathak was directed to be shadow witness and to remain nearby to see the transaction and overhear the conversation and give signal by scratching over his head. The pre-trap proceedings were reduced into writing in the handing over memo (Ex.PW1/B). Trap party reached the MCD office. PW1 accompanied by PW4 went to the office room of the accused VKC where they met accused DS, who allegedly demanded the settled amount, but on PW1''s explaining that he has brought only Rs. 5,000/-, accused DS asked him to wait for the accused VKC, who was not available at that time. Both PW1 and PW4 waited for him near the office gate while other members of the trap team waited nearby. Accused VKC came at about 12.05 PM. PW1 met him and followed him to his office room at the first floor along with PW4. Accused DS also followed all of them to the same room and informed the accused VKC about the reduced amount brought by PW1. At this, PW1 assured accused VKC that he would arrange the balance amount by the following day, on which VKC asked DS to receive the amount brought by him. Accused DS accepted the tainted notes worth Rs. 5,000/- from PW1 with his right hand, counted them with the help of left hand and kept them in the right side pocket of his pant. At this stage, PW4 gave the pre-determined signal, whereupon other members of raiding party arrived and caught hold of both the accused by their wrists. The tainted notes were recovered from the right side

pocket of pant of accused DS PW5 counted and compared the numbers of notes with the numbers noted in the handing over memo Ex.PW1/B and found them tallying. Thereafter, the wash of fingers of both the hands of accused DS and right side pocket of his pant were taken separately which in the process turned pink in the sodium carbonate solution. Three washes were separately sealed in different bottles. The amount of Rs. 5,000/- and the trouser of accused DS were taken into possession. All these proceedings were reduced into writing in recovery memo, Ex.PW2/C. Both the accused were arrested. On interrogation, it was revealed that plumbing tools seized by them on the previous day from the house under construction were lying in a hired truck standing in front of the MCD office. They were recovered from the said truck and later on released to the complainant PW1. The three wash bottles were sent for analysis to CFSL. The analysis report confirmed the presence of phenolphthalein powder in sodium carbonate. After obtaining the required sanction of the competent authority (Shri Pradeep Singh, (PW3)), the accused were sent for prosecution.

4. The accused pleaded not guilty to the charges framed against them u/s 120B IPC read with Section 7 and Section 13(1)(d) read with Section 13(2) of the Act. The prosecution examined as many as 11 witnesses.

5. Incriminating evidence appearing against the accused was put to them in their statements recorded separately u/s 313 Code of Criminal Procedure Accused VKC admitted that he was posted as JE, Building Department, South Zone during the relevant period and the ward where the property in question situated, was being looked after by him. They both denied knowledge of any construction/repair work in the property in question. They also denied having ever visited the house in question or demanding any bribe or having settled the bribe of Rs. 7,000/- or having received Rs. 5,000/-. The accused DS denied having ever worked with accused VKC. He stated that he has been working as office peon and not beldar in MCD. VKC also denied the entire evidence relating to trap. He stated that DS was brought to his room from outside by CBI officials. With regard to CFSL report, they both showed ignorance. They also questioned the validity of the sanction for the prosecution. VKC also stated that the complainant was an accomplice who got him involved falsely in order to get rid of demolition of the premises in question by MCD. He also stated IO (PW9) to be an interested person being the resident of the locality of the complainant, PW1. Likewise, DS also claimed having been falsely implicated at the instance of officials of CBI. No evidence in defence was led by VKC whereas one Rakesh Kumar (DW1) from the office of South Zone, MCD was examined by DS as his only witness.

6. Mr. Sandeep Sethi, senior counsel and Mr. Randhir Jain, learned Counsel for VKC and DS, respectively, have assailed the impugned judgment and order mainly on the ground of lack of sufficient and reliable evidence against the accused persons. They alleged various infirmities in the prosecution case as also discrepancies in the statements of prosecution witnesses. They also alleged the complainant to be an accomplice and interested witness. Learned Counsel for

VKC specifically submitted that there was no evidence qua this accused regarding demand and also no recovery was effected from him and that the complainant has made various improvements in his statement made in the Court. The learned defence counsel of accused DS submitted that this accused was not attached with VKC, but was posted as peon and that he had no authority to take any action against unauthorized construction/repairs. He also submitted that there was no evidence of demand against him and that the amount which was recovered from him was in fact received by him for and on behalf of VKC.

7. Before adverting to the submissions of learned defence counsel, some of the facts which are admitted or undisputed may be noted. It is not in dispute that the premises in question was owned by Smt. Hardev Batra (mother-in-law of PW1 and mother of PW2). From the testimonies of PW1 and PW2 it is also borne out that some unauthorized construction was carried in the said premises. Though, the unauthorized construction was not booked for any action, as was borne out from the report Ex. PW6/C of PW6, but in the event of the same having come to the notice of MCD, action was to follow against the builder/ occupier, which could include demolition of the construction and also prosecution of the one, who had undertaken unauthorized construction. It is also proved from the testimonies of PW1 and PW2 that none of them were present at the site when the Municipal Officials allegedly came and took away the plumbing tools in the forenoon of 16th November, 1992. PW1 had attributed to PW2 about the information of visit of accused DS, who according to PW1 was present at the site. Since PW2 on his part clarified to be not present there and stated having come to know from some plumber Satish, the testimony of both PW1 and PW2 with regard to visit of DS would be taken as hearsay and not admissible. The matter may not end here. PW2 had also deposed about the visit of this official 3-4 times earlier also. To the same effect was the testimony of PW1 regarding the earlier visit of accused persons at site. About DS''s earlier visits, PW2 stated that he had started visiting from the time the construction commenced. Though, according to PW11, DS was not posted as beldar, but as peon in the office, admittedly, he was attached with the building department where VKC was positioned as JE. To the same effect is the office order Ex.PW10/F, application Ex.PW10/E and also the sanction order Ex.PW3/A which prove that DS was posted as peon in the building department. Though, DW1 stated about DS having been posted as a peon in building department, PW11 Kishori Lal, posted in the same department at that time deposed about certain acts performed by him when attached with VKC. This witness was also attached with VKC as beldar and was on demolition duty. He stated that on 16.11.1992, he accompanied with other beldars including DS went to a site in Tughlakabad (premises in question) for demolition of unauthorized construction, on the instructions of VKC and seized some implements of plumber. He stated that the seized articles remained lying in the truck. His testimony remained unassailed . The seized articles referred to by him are the same as spoken by PW1 and PW2. There is no reason to doubt the testimony of this witness, who also corroborates PW1. From all that is noted in this regard, it

comes out to be that DS was posted as peon in the building department where VKC was JE, but he (DS) was also being assigned some related works by the JE, may be that of beldar. In fact, there was no dispute that during the relevant period DS was posted in the building department where VKC was posted as JE. It also remained undisputed that both VKC and DS were present on duty in the office on 17th November, 1992.

8. From Ex.PW3/A it is proved that VKC was posted as JE in the area where premises in question is located and it fell within his jurisdiction, may be temporarily since 28th September, 1992. Office order Ex. PW10/B to PW10/D would also indicate that the municipal staff of building department were obliged to inspect the properties in the area, detect the cases of unauthorized constructions and take suitable action as per law and rules relevant thereto. Inspector S.K. Peshin (PW9) was resident of CBI quarters, Kalkaji, New Delhi which happened to be near the locality of DDA flats where complainant PW1 happened to be residing. Learned Counsel for VKC made reference about the connivance of PW1 with PW9 and based on that impleadment of the accused at the instance of PW9. Instead of deferring to discuss this aspect later, it may right now be stated that this was rightly dealt with by learned Special Judge who after discussions recorded that PW9 was only doing his official job and it was irrelevant that he was residing near the locality of residence of PW1. Having examined the testimony of PW1 and PW9 in this regard, I do not find any illegality or infirmity in the findings recorded by learned Special Judge in this regard.

9. Learned defence counsel submitted that complainant PW1 was not reliable since he had made lots of improvements in his statement recorded in the Court and also because he was interested to get rid of accused VKC to avoid demolition of unauthorized construction. It may be that in the given facts and circumstances, the testimony of such a witness may not be reliable, but it should not be accepted as a general principal that in every case the testimony of such a witness was to be discarded or branded as interested. All depends on the facts and circumstances of each case and the nature of deposition made by such a witness.

10. With regard to the testimony of complainant the Apex Court in the case of State of U.P. Vs. Dr. G.K. Ghosh, observed as under:

24. ...In the case of an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, the Court may feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the conviction.

11. In the case of Rajinder Kumar Sood Vs. The State of Punjab, the Division Bench of Punjab and Haryana High Court while dealing with the proposition

whether testimony of complainant required independent corroboration observed as under:

We are of the opinion that there is no question of the Court insisting upon any such independent corroboration of the complainant in regard to the circumstances of the kind. When a given complainant first visits a public servant for doing or not doing some task for him he does not go to him as a trap witness. He goes there in a natural way for a given task. To require a witness to take a witness with him at that stage would amount to attributing to the complainant a thought and foreknowledge of the fact that the accused would demand bribe.

12. In the case of State v. Zakaullah 1998 SCC 456, it was held by the Supreme Court that evidence of the bribe giver cannot be rejected merely because he is aggrieved by the conduct of the accused. It was further held that nobody over-heard the demand made by the accused for bribe or the amount was found in the left pocket of the accused and not in the right pocket, are flippant grounds which should never have merited consideration.

13. Next is the contention regarding improvements by the complainant in his statement made in the Court which was allegedly not specifically dealt with by learned Special Judge. I have with very cautious approach thoroughly scrutinized the testimony of complainant (PW1). At the outset it is noted that the complaint Ex.PW1/A was made by the complainant on a small piece of paper, in a very short span of 5-7 minutes and even otherwise ordinarily a complaint does not contain the minute details of the transaction and conversation between the complainant and the accused. Further, PW1 has stood a very lengthy cross-examination running in several pages for several dates and it is seen that he has been confronted with his statement u/s 161 Code of Criminal Procedure and not the complaint Ex.PW1/A. Cross-examination has gone into the micro details and most of the questions are apparently irrelevant. I may make reference to a few of those confrontations. In answer to a question put to him in cross-examination, PW1 stated that he got recorded in his statement (under Section 161 Code of Criminal Procedure) that he was directed to attend CBI office on 17th November, 1992 by 8.00 AM. In the statement (under Section 161 Code of Criminal Procedure) it was not so specifically recorded, but what was recorded was that Inspector S.K. Peshin (PW9) had directed him to attend CBI office on 17th November, 1992 at 8:30 am. In answer to another question he stated that in his statement (under Section 161 Code of Criminal Procedure) it was recorded that on 17th November, 1992 at 8 a.m. he went to the CBI office and met SP there. Though it was not recorded in these words, but it was recorded that he had gone to the office of PW9 and met him there at 8 a.m. Similarly, questions were put to him that he had got recorded in his statement u/s 161 Code of Criminal Procedure that in the room of SP demonstration of phenolphthalein powder in sodium carbonate was shown to him and to the witnesses. He was further asked as to whether he had stated in statement that currency notes of Rs. 5,000/- were produced by him before CBI, SP. It is seen that what was recorded in

statement u/s 161 Code of Criminal Procedure was not exactly what was put to him, but in somewhat different manner, and further that all minute details were not so recorded in his statement. All these are so micro details that no one seriously tries to remember, nor is even expected to do so. A witness is not expected to have photogenic memory, to remember and narrate such micro details from the beginning to the end. Similarly, it is also not expected either from the complainant or from the police officials responsible for recording statement u/s 161 Code of Criminal Procedure to record micro details. In fact such statements are taken in a haphazard manner. These statements are, usually a summary of what a witness says and very often perfunctory. Sometimes, it so happens that the witness gives the details to the police official in his statement u/s 161 Code of Criminal Procedure, but the latter records only what appears to him to be relevant and material parts thereof. Such witness may unnecessarily face hard time in the cross-examination when confronted with different aspects not found recorded in his statement u/s 161 Code of Criminal Procedure

14. On the other hand, going through the testimony of complainant (PW1), it gives an impression about the trust-worthiness of his deposition. He has described in detail about the exterior and interior of the office of MCD and that of VKC. All the suggestions given to him by learned defence counsel for VKC in this regard have been rightly answered by him. He even answered rightly about the sitting plan, number of chairs and almirah etc. in the office of VKC. He categorically stated and maintained about the complaint having been made by him. He denied the suggestions that the complaint was recorded subsequently after the arrest of the accused persons. He also denied that accused VKC was falsely implicated to get rid of action in respect of illegal construction.

15. Complainant (PW1) has throughout maintained about the demand of Rs. 10,000/- made by accused VKC for allowing unauthorized construction and subsequently his having agreed to reduce the same to Rs. 7,000/-. He stated that on 17th November, 1992 he along with PW2 visited the office of VKC where he was not present, and they met accused DS there. DS inquired about the money that was to be paid, to which PW1 stated that he has arranged Rs. 5,000/- only. On this accused DS stated either to pay the settled amount of Rs. 7,000/- or wait to talk with VKC. Thereafter, he and PW2 waited near the gate of MCD office, whereas other members of the raiding party stood nearby around. When VKC came, he and PW2 followed to his office, where DS also arrived. VKC inquired from PW1 about the money he had brought. On his telling that he (PW1) could arrange only Rs. 5,000/- and will pay balance on the following day, VKC directed him to pay Rs. 5,000/- to DS and balance to him by tomorrow. He also directed DS to take the money and report him if he had paid the balance on the following day. Thereupon, he gave tainted notes of Rs. 5,000/- to accused DS who accepted the same by one hand, counted the same and kept the bribe money in the left side pocket of pant, which he was wearing. On this, CBI persons arrived and caught hold of both the accused. Recovery of the tainted money was effected from the pocket of the pant of DS. In his cross-examination,

the complainant also maintained that at the time of taking bribe, both the accused were present. He also maintained that he did not offer money to DS as he was not prepared to accept Rs. 5,000/- and on the advice of DS they waited for accused VKC. There is no doubt that accused DS did not demand money at this stage, but it stood maintained by PW1 that he was present when bribe money was demanded by VKC and that he (DS) had accepted the same. With regard to the recovery of tainted money from accused DS, there is no dispute. The defence of accused DS is that he had accepted money for and on behalf of VKC. However, on behalf of DS a suggestion was put to PW1 that tainted money had fallen on the ground, from the hand of PW1, and it was picked up by accused DS. On the other hand, in the cross-examination on behalf of accused VKC, it was put to him that DS was brought in the office of VKC and the money had been already recovered from him (DS).

16. Though the testimony of PW1 itself was sufficient and credible enough to substantiate the prosecution case, but it also finds corroboration from the testimony of PW2 and also on material aspects from the testimonies of PW4, PW5 and PW9. PW2 also deposed about the implements of plumber having been taken away by the officials of MCD. PW2 has categorically stated and maintained about the visit of DS at the premises on 16.11.1992 and his leaving the message there to meet VKC in the office in connection with unauthorized construction in the premises. He stated and maintained that he along with PW1 went to the office of MCD to meet VKC, where they met both the accused. VKC demanded a sum of Rs. 10,000/- from them to escape demolition of the unauthorized construction. He denied all the suggestions made on behalf of both the accused persons that they did not make any demand, nor any amount was paid by PW1, nor any money was received by accused DS. He was also confronted with the statement made u/s 161 Code of Criminal Procedure on very minor aspects which were neither relevant nor material. He also stood a lengthy cross-examination and fully supported the prosecution case.

17. Though, PW4 and PW5 became hostile, but on reading their testimonies as a whole it would be seen that they have corroborated PW1 and have supported the prosecution case on material aspects. PW4 narrated the entire version related to the trap proceedings. He deposed about complaint Ex.PW1/A, handing over memo Ex.PW1/B, his joining the trap as a shadow witness and also to a large extent about the minute details about the proceedings and conversation. There was some inconsistency in his deposition as he used the word "Saheb" uttered by DS as referring to VKC. In his cross-examination by the prosecutor, he was put the verbal conversation that took place between PW1 and VKC, to which he denied as having taken place in his presence. This conversation cannot be attributed much importance in as much as he was admittedly at a little distance from PW1 and VKC. However, when he was confronted with his statement u/s 161 Code of Criminal Procedure, he stated that DS had informed that "Saheb" (VKC) had gone to site and shall return within 1-11/2 hour and advised him (PW1) to wait for him. Though, he denied the suggestion that accused VKC

asked PW1 to give money to DS, but when confronted with his statement u/s 161 Code of Criminal Procedure, it was found recorded that on asking of VKC, PW1 gave Rs. 5,000/- to accused DS. He also admitted that DS accepted money and he (PW4) gave signal to the raiding party. He also stated that PW5/Jagdish Prasad had taken search of right pocket of the accused DS and recovered Rs. 5000/- in the shape of 100 notes of denomination of Rs. 50/-. He stated that these notes were the same which were given by PW1 to DS and that the number of these notes tallied with the numbers noted in Ex.PW1/3. He further stated that all the proceedings were taken down in the recovery memo Ex. PW1/C signed by him. He also corroborated regarding the procedure followed in taking washes of fingers and pocket of pant of accused DS separately and the solutions turning pink in the process. He deposed in favour of the prosecution by denying the suggestion that no talks took place between PW1 and DS in his presence and that no money was given to DS. It is noted that a suggestion was given to PW4 that the amount of Rs. 5000/- was accepted by DS on the directions of VKC. Reading the testimony of this witness, it would be seen that though he was shaky at some places, but in the entirety he supported the prosecution case and also corroborated PW1.

18. Likewise, PW5 who was declared hostile. has also supported the prosecution case almost on the same lines as PW4. He positively identified accused DS, referring him to "a boy with small beard", who met them at the MCD office and had talked with PW1. When he started giving different version regarding entering MCD office and the conversation, he was cross-examined by the learned prosecutor. He stated that when PW1 and PW4 along with PW2 were in the process of climbing stairs, PW4 gave signals to the CBI officials and the accused DS was apprehended from the gallery. He denied having seen accused VKC coming around 12:05 p.m. and talking to PW1 or having seen PW1 and PW4 accompanying VKC upstairs, followed by DS. He admitted that he had taken search of accused DS and recovered tainted money Ex.P-1 to P-100. He also confirmed that the seal which was used for sealing various exhibits was handed over to him after use. He produced the brass seal used in the proceedings, at the time of his deposition. Reading his statement in one go would simply demonstrate him supportive of prosecution, though somewhat confused and shaky.

19. The testimony of PW9 is almost identical to that of PW1 and is supportive of the prosecution case. In fact, he has fully corroborated the statement of PW1. Whereas some suggestions were given to PW1 that accused VKC was caught red handed, tortured and beaten by PW9 at his instance in MCD office and later in the CBI office and subsequently during police remand, no suggestion on any of these lines was given to PW9. There is nothing on record to indicate that accused VKC had, at any stage, been tortured or manhandled as alleged. He denied the suggestion that he had fabricated the pre raid proceedings vide memo Ex. PW1/C. Despite having been subjected to lengthy cross-examination by the accused persons, nothing was elicited to doubt the testimony of PW9.

20. PW6, who was the engineer in the building department of MCD and was on duty at the time of trap, was summoned by the CBI officials after apprehension of accused persons. He deposed about the recovery of Rs. 5,000/- from the right pocket of the accused DS in his presence. He also stated about the number of notes tallying with the numbers as noted down in the handing over memo. He is a signatory to the recovery memo Ex.PW1/C, prepared in his presence at the spot. He also denied the suggestion that notes Ex. P-1 to P-100 were not recovered from accused DS in his presence.

21. PW7 analysed the washes vide report Ex.PW7/A and found the presence of phenolphthalein powder in sodium carbonate, thereby confirming that the tainted money was handled by accused DS, accepted with his hands and kept in his pocket.

22. From the evidence, as noted above, it is clear that accused VKC had demanded Rs. 10,000/- from PW1; that a sum of Rs. 5,000/- was paid by PW1 to DS, as directed by VKC, and that the same was recovered from DS, and that it was for not taking action against the unauthorized construction carried out in the house of mother-in-law of PW1.

23. With regard to the submissions of learned defence counsel that there were certain discrepancies in the statements of the witnesses, it may be stated that the discrepancies which have been pointed out by them are of so trivial nature which are natural and likely to occur with the passage of time. Learned Special Judge has dealt with the discrepancies and observed all of them as irrelevant and trivial. These have been found dealt by him in the following manner:

97. Counsel then referred to the fact that the complaint had alleged initial demand to be for Rs. 10,000/- and later settled at Rs. 7,000/-. They argued that there is no reason why raid would be arranged with only Rs. 5,000/-. This argument is devoid of any substance in that PW1 has clearly shown in his statement that he was able to arrange only such amount of money, and since the amount was less than the settled amount, A-2 had haggled with him while PW1 had insisted on meeting PW1 for attempting get the bribe amount reduced by using some reference.

98. Next contradiction which the counsel alleged was material is in the context of source of trap money. They pointed out that PW1 had claimed he had received the trap money from his mother in law, which was not supported by PW2. I do not read much into this circumstance. The evidence has shown that the affairs of mother of PW2 were being looked after by PW1, her son in law. She was getting the house constructed through PW1. She thus would not depend on PW2 for such purposes. Demand for bribe was followed up by report to CBI and trap being arranged on the next day. It appears PW2 had no occasion to learn the entire facts inclusive of source of money that had been arranged. It has to be borne in mind that after all it was PW1, and not PW2, who proceeded to lodge report with CBI.

99. Learned defence counsel then submitted that in the complaint and statements u/s 161 Code of Criminal Procedure it had been shown that A-1 had demanded bribe in his office room, whereas in the witness box the witnesses would refer to this meeting prior to the complaint having taken place in the verandah of the office building. This is too trivial and insignificant a contradiction to be given any credence.

100. Learned Counsel for A-1 was at pains to argue that in the forenoon of 17.11.92, during conversation that is shown to have occurred between PW1 and A-2, in the entire utterance attributed to A-1, he would not mention the name of A-1, but was only referring to the officer concerned by expressing "Saheb". He argued that PW1 made material improvements in the course of his statement by referring to A-2 having mentioned A-1 by name at such stage. Argument does not appeal to me. A-2 was a menial staffer subordinate to A-1. In the common courtesies extended to superiors he would naturally refer to A-1 as "Saheb". This conversation is not to be seen in isolation. It has to be appreciated in the over all facts and circumstances, with the earlier demand directly made by A-1 in presence of A-2, as the back drop, and what followed after this conversation involving A-1 & A-2, and PW1 later in the afternoon. I am not prepared to condemn the evidence of PW1 as suffering from improvements on such count.

101. Defence counsel then submitted that the evidence about handing over of money was contradictory, in that the evidence of PW1 about handing over of the money in the office room is contradicted by evidence of PW4 indicating handing over of money in the verandah outside the room of A-1, and of PW5 about handing over of money in the stair case.

102. PW5 did create some confusion by deposing about sequence of events almost upside down. But it is clear that he was mixing up the entire facts. Confusion on his part cannot disturb the over all picture that emerges from the evidence of PW1 & PW4. It does appear that A-1 had instructed A-2 to receive the money on his behalf from PW-1. There is possibility that in the wake of this instruction PW1 & A-2 may have come out, and the money was actually handed over just outside the room of A-1. This, however, does not mean that evidence about handing over of money to A-2 becomes suspect. In this context, statement of PW8 about A-2 having been brought from outside to the room of A-1 assumes significance. I do not agree with the submission of learned defence counsel with reference to Dinkar Bandhu Deshmukh and Another Vs. State, that statement of PW8 creates puncture in the prosecution case. In my view, said statement rather confirms the prosecution case.

24. The contention of learned Counsel for VKC was that since the unauthorized construction had not been booked and no action was to follow, there was no occasion for VKC to demand bribe from the complainant. It is noted above that the unauthorized construction was actively undertaken, but the same was not booked in the records of MCD. In fact, this fact came to be known when the trial of the accused commenced or may be during the investigation. The fact that it

was unauthorized and was likely to invite some trouble for the owner or occupier of the building, was also the reason for VKC to compel them to pay the bribe. No doubt, the unauthorized construction was an illegal act on the part of the owner or PW1, but the accused VKC wanted to take advantage of the factual situation.

25. It was next submitted by learned defence counsel for VKC that since money had been recovered from DS, VKC could not be held guilty. There is neither any logic nor any force in this submission of learned Counsel. The evidence clearly shows that DS received money on the specific instructions of VKC. Learned Counsel for DS, on the other hand, submitted that he was a small time peon and was acting on the instructions and directions of VKC, who was his senior and that the money taken by him was not for himself, but on the direction and for and on behalf of VKC. Alternatively, he submitted that if at all any offence was made out against DS, it is u/s 7 only and not u/s 13(1)(d).

26. For appreciating this contention it would be useful to see the ingredients of Section 7 and Section 13(1)(d).

The essential ingredients of Section 7 are:

(i) that the person accepting the gratification should be a public servant;

(ii) that he should accept the gratification for himself and the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or dis favour to any person.

The essential ingredients of Section 13(1)(d) of the Act are:

(i) that he should have been a public servant;

(ii) that he should have used corrupt or illegal means or otherwise abused his position as such public servant, and

(iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person.

27. In identical facts before this Court in the case of South Delhi Maternity and Nursing Home (P) Ltd. Vs. MCD and Others, , this Court held as under:

Section 7 and Section 13(1)(d) of P.C. Act make it clear that even if money is accepted by a person on behalf of other, he commits offences u/s 7 and 13(1)(d) of P.C. Act. Words used by the statute in Section 7 of P.C. Act are "acceptance from any person for himself or for any other person any gratification". Similarly, words used by the statute in Section 13(1)(d) are "if he obtains by corrupt or illegal means for himself or for any other person any valuable thing or pecuniary advantage". A reading of Section 13 and 7 of the P.C. Act makes it clear that if a person has knowledge that money being accepted by him was bribe money for someone else, the offence is complete.

28. Coming back to the role of accused DS in the entire episode, as discussed

above, it is true that no direct demand of bribe money is attributed to DS by any witness, particularly complainant PW1 and PW2, but the fact remains that it stands proved on record that he was present on all material times in the company of VKC, whenever there was conversation regarding the bribe money between VKC and PW1. It is also established that he had also gone along with others to the premises in question and had taken away the implements from there and had also left a message for the owner to meet VKC on the following day. Then, he was also available outside the office of VKC, when PW1 and PW2 had gone to meet the latter. When PW1 informed him about having brought a sum of Rs. 5,000/- against the settled amount of Rs. 7,000/-, he asked them to wait for VKC. The conversation which took place and the involvement of DS, as stated above, significantly pointed towards complicity of accused DS with VKC. His plea that the money fell down from the hands of PW1 and was picked up by him, being improbable has already been disbelieved. Since he was associated with VKC as his peon, further presumption would also be raised that he was looking towards sharing the booty with VKC. Assuming that the bribe money was taken by him at the instance and on the direction of and on behalf of VKC, as submitted by the learned defence counsel, in the facts and circumstances, still all the acts of omission and commission of accused DS surely will be covered within the ingredients of Section 7 as well as Section 13(1)(d) read with Section 120B IPC.

29. Section 20 of the Act provides that where at the trial it is proved that an accused has accepted or obtained or agreed to accept or attempted to obtain any gratification (other than legal remuneration), it shall be presumed unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain such gratification as a motive or reward as mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate. The requirement of this Section is only that it must be proved that the accused has accepted or obtained or agreed to accept or attempted to obtain gratification. It may be proved by direct evidence as in the present case. It has been proved from the direct evidence of testimonies of PW-1 and PW-2 that the gratification was accepted as a motive or reward for helping the complainant in respect of the unauthorized construction/repairs.

30. I am fortified in my findings with regard to the applicability of Section 7 and Section 13(1)(d) from the judgments of Apex Court in the case of Madhukar Bhaskarrao Joshi Vs. State of Maharashtra, and A. Subair Vs. State of Kerala, . In the case of Madhukar Bhaskarrao Joshi (supra), the Apex Court held as under:

12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word ''gratification'' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise

that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing." If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word ''gratification'' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.

31. In the case of A. Subair (supra), the Supreme Court held as under:

The legal position is no more res integra that primary requisite of an offence u/s 13(1)(d) of the Act is proof of a demand or request of a valuable thing or pecuniary advantage from the public servant. In other words, in the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence u/s 13(1)(d) cannot be held to be established.

32. The presumption as drawn against the accused as noted above could not be discharged by them by any means, i.e., neither from the cross-examinations of prosecution witnesses, nor by cogent and reliable defence.

33. In view of the analysis of the prosecution case as above, I do not see any infirmity and illegality in the impugned judgment and order of the learned Special Judge and therefore, do not see any reason to interfere with the same.

34. With regard to the quantum of sentence, learned defence counsel have prayed for lenient view, stating that the case is about 18 years old and accused persons having undergone lots of hardships. These are the usual type of arguments which are submitted invariably in all such cases. In the case of State of Andhra Pradesh Vs. V. Vasudeva Rao, the Supreme Court observed thus:

31. In the present case, how could the mere fact that this was pending for such a long time be considered as a "special reason"? That is a general feature in almost all convictions under the Act and it is not a specialty of this particular case. It is a defect inherent in implementation of the system that longevity of the cases tried under the Act is too lengthy. If that is to be regarded as sufficient for reducing the minimum sentence mandated by Parliament the legislative exercise would stand defeated.

35. In the present factual matrix, I am not persuaded to award the prescribed minimum sentence to accused VKC. However, keeping in view the position and role of accused DS in the entire set of circumstances, his case persuades me to impose the minimum prescribed sentences. Consequently, while maintaining the conviction of both the accused persons u/s 7 and 13(2) of the Act read with Section 120B IPC, accused VKC is sentenced to undergo rigorous imprisonment of two years with fine of Rs. 500/- each on both counts. Accused DS is sentenced to undergo rigorous imprisonment of six months u/s 7 of the Act read with Section 120B IPC and rigorous imprisonment of one year u/s 13(2) read with Section 120B with fine of Rs. 500/- on each count. With this modification in the impugned order on sentence, rest of the impugned order is maintained. The

substantial sentences awarded shall run concurrently. The period of custody already undergone by the accused shall be set off. The accused shall surrender and be taken into custody to undergo remaining part of imprisonment.

