(2020) 05 DEL CK 0033

In the Delhi High Court

Case No : Criminal Appeal No. 358 Of 2013, Criminal Miscellaneous Application No. 2562 Of 2017

Sita Ram — APPELLANT

Vs

CBI — RESPONDENT

Date of Decision : 04-05-2020

Acts Referred:

Prevention of Corruption Act, 1988 — Section 4, 7, 13(1)(d), 13(1)(d)(i), 13(1)(d)(ii), 13(2), 20

Code Of Criminal Procedure, 1973 — Section 161, 313

Citation : (2020) 05 DEL CK 0033

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Sunil Dalal, Devashish Bhadauria, Rajesh Kumar, Saumya Johari , Santwana

Final Decision : Disposed Of

Judgement

Manoj Kumar Ohri, J

1. This appeal is directed against the judgment dated 04.02.2013 passed by the Special Judge, CBI-01, Central District, Delhi in CC No. 20/08 in RC 21(A)/06 whereby the appellant was convicted for the offence punishable under Section 7 & 13(1)(d) read with 13(2) of P.C. Act, 1988. Further, vide order dated 05.02.2013, the appellant was sentenced to undergo RI for 3 years for the offence punishable under Section 7 along with fine of Rs.1 lac in default whereof to undergo SI for three months. He was also sentenced to undergo RI for 3 years under Section 13(1) (d) read with 13(2) of the P.C. Act along with fine of Rs.1 lac in default whereof to undergo SI for three months.

2. The facts which are necessary for the disposal of this appeal, as noted by the trial court, are as follows: -

"1. Executive Engineer, CD-IV, CPWD Pusa had invited tenders for construction of shed for diesel generator for KAB-I building, Pusa, New Delhi. Tenders were opened and complainant Ajit Singh Yadav was called for negotiations by the accused who was Executive Engineer in the last week of May 2006. Instead of awarding the contract to the complainant whose bid was lowest, he demanded bribe of 2% of the accepted tender value which was approximately Rs.7,000/-. Accused told the complainant that in case money is paid, work would be awarded otherwise tender would be cancelled and fresh tender will be called for. Complainant then lodged a complaint on the basis of which instant FIR no. RC-DAI-2006-A-0021 was registered and was entrusted to N.V.N. Krishnan for investigation and laying of the trap.

2. A trap team constituting of officers of CBI and two independent witnesses from NCCF, Nehru Place was constituted. Complainant was introduced to the team members who satisfied themselves about genuineness of the complaint. Complainant also produced Rs. 7,000/-. Their numbers were noted down. Phenolphthalein powder was applied to the currency notes and independent witness Gurender Pal Singh gave demonstration by touching the notes with his fingers and thereafter dipping his fingers in solution of sodium carbonate. Digital voice recorder was called for. Formal voices of the independent witnesses was recorded therein and it was handed over to the complainant with directions to switch it on before contacting the accused. A KCR-360 with TDK-D-60 audio cassette along with credit card transmitter was arranged to overhear the conversation which may take place between accused and the complainant. Complainant also informed the CBI officials that accused would not accept bribe in presence of third person. It was decided not to send a shadow witness along with the complainant.

3. The team reached near office of the accused at about 12.25 hours. Complainant was directed to contact the accused, while independent witness Ram Swaroop Yadav was to discretely follow the complainant. Complainant went inside chamber of the accused while shadow witness stood outside. After about 5-10 minutes complainant came out and gave pre decided signal. Inspector Prem Nath who was overhearing the conversation also informed about the completion of the bribe transaction. Shadow witness also gave the signal and the team members rushed inside. Accused was found sitting on his chair. Upon being challenged about accepting the bribe, he kept silent and then admitted the acceptance. He was caught from his both wrists. Colourless solution of sodium carbonate was prepared. Accused dipped his fingers of both hands one by one. On each occasion, solution turned pink. It was poured into clean glass bottles, wrapped and labeled as RHW and LHW. The bribe amount was recovered lying on a towel spread on chair of the accused. Their numbers were tallied. Portion of the towel was also dipped in colourless solution of sodium carbonate which turned pink again. It was poured into glass bottle and labeled as TW. Pant of the accused was got removed. Rear left side of the pant was dipped in another solution of sodium carbonate. It too turned pink. It was poured in a bottle and labeled as LRSTPW. The voice recorders were replayed which confirmed demand

and acceptance of bribe. Accused was arrested. His personal search was conducted. Subsequently charge sheet was filed wherein it was prayed that accused be summoned and tried."

3. After completing investigation, a charge-sheet was filed and the following charge was framed against the petitioner.

"That on 20.6.06, at the office of Executive Engineer, Construction Division No. IV, CPWD, IARI Complex, Pusa, New Delhi you while working as Executive Engineer in Construction Division No. IV, CPWD, IARI Complex, Pusa, New Delhi and as such being a public servant demanded and accepted bribe of Rs. 7000/- other than legal remuneration from the complainant Shri Ajit Singh Yadav as a motive or reward forwarding contract for construction of shed for diesel generator at KAB-I Building, Pusa, New Delhi and thereby you committed an offence punishable under section 7 of the Prevention of Corruption Act 1988 within my cognizance.

Secondly on the above said date and place, you being employed as above public servant obtained bribe of Rs.7000/- from the said complainant as a pecuniary advantage for yourself by corrupt and illegal means or otherwise by abusing your position as such public servant and thereby you committed an offence of criminal misconduct as specified under section 13(i)(d) and punishable u/s 13(2) of the Prevention of Corruption Act 1988 and within my cognizance."

4. The prosecution in support of its case examined a total of 15 witnesses. In turn, the appellant examined 9 witnesses in his defence.

5. I have heard learned counsels for the parties and also gone through the trial court records. Mr. Sunil Dalal, learned counsel for the appellant has raised the following contentions:

(i) The complainant had prior motive and falsely implicated the appellant with the help of Insp. N.K. Jain, who though was the second I.O., but was involved in the case from the very beginning and conducted the trap proceedings. He also referred to the proceedings dated 19.06.2006 in this regard.

(ii) Neither demand nor acceptance of the bribe amount was proved.

(iii) The recovery was not from the person of the appellant and the testimony of the witnesses is contradictory on this aspect.

(iv) The complaint made to the CBI was belated and show malafides.

(v) Overwriting in the complaint (Ex.PW-6/A) and handing over memo (Ex.PW-4/A).

6. Per contra, Mr. Rajesh Kumar, learned SPP for the CBI has supported the impugned judgment and has prayed for the dismissal of the appeal by contending that the testimony of the complainant and other witnesses is consistent and reliable.

MATERIAL WITNESSES :

7. Ms. A. Radharani proved the sanction order (Ex.PW1/A).

8. Mahesh Kumar Sharma, UDC, CPWD proved the original NIT (Notice Inviting Tender) and its attested copy of the relevant pages as Ex.PW1/A & Ex.PW1/B (Colly) respectively. He deposed that the appellant was Executive Engineer at the relevant time and his duty was to publish the tender.

9. Ramesh Kumar, Asst. Accounts Officer, Pay and Accounts Office (DGW) was examined as PW-3. He deposed that the bid of M/s Ajit Construction Company (complainant's company) though lowest, was still 52% higher than the estimated cost. ASW planning prepared the market rate justification at 38.9% above the estimated cost. He, on instructions of the appellant, contacted the complainant and thereafter, negotiations were held between the complainant and the appellant. He proved the negotiations letter as Ex.PW3/B. He also deposed that prior to the negotiations, a P.G. letter (Performance Guarantee letter - Ex.PW3/C) was sent to the contractor. After the issuance of P.G. letter, the appellant went on leave. The contract was not awarded. In his cross-examination he stated that the cost of construction of temporary shed was Rs.3 lacs and the lowest bid of Ajit Construction Company, after negotiations, was Rs.3,72,319/-. He stated that in case of variation of more than 10%, a prior approval of the end user (ICAR was the end user in the present case) was to be taken for awarding the contract. He clarified that the letter (Ex PW3/C) did not bear the signatures of the appellant and the same was never issued. He also stated that Insp. N K Jain was present at the spot who called him to produce documents after the appellant was apprehended. N.K. Jain conducted the proceedings while sitting on the seat of the appellant. To the same extent is the testimony of Mr. Suresh Kumar (PW-5) who deposed that the negotiations took place on 31.05.2006 between the complainant and the appellant.

10. Mehar Singh, Asst. Engineer, CPWD was examined as PW-11. He deposed that through his letter (Ex.PW4/E), he had forwarded a detailed estimate to the Divisional Office for inviting tender for construction of temporary shed for DG Set. He submitted an estimate of Rs.2,76,110/-for calling tender. He deposed that generally the work is awarded within 15 days after scrutiny but in the present case, the appellant delayed the negotiation with the lowest bidder and the contract was not awarded till 20.06.2006 i.e., the day of the trap. In his cross-examination, he stated that at the relevant time, the appellant had very heavy workload of providing maintenance and construction and in case of variation of more than 10% between the allotted amount and the tender, justification was required to be prepared. He stated that the bid of the complainant's company was for Rs.4,07,539/-.

11. Bhupender Singh Samlok, Executive Engineer, CPWD was examined as PW-12. He witnessed the recovery of the GC notes lying on the chair and also the proceedings related to hand wash, pant wash and towel wash conducted at the

spot. He also identified his signature on the Recovery memo (Ex.PW 4/B). During cross-examination by the ld. PP, he denied having made any statement under Section 161 Cr.P.C.

12. The complainant, Ajit Singh Yadav was examined as PW-6. He deposed that in April, 2006 he filled the tender for construction of temporary shed for the DG Set. The appellant demanded bribe of Rs.7,000/- for awarding the work which was 2% of the tender value. He proved his complaint dated 20.06.2006 which was given to SP, CBI as Ex.PW6/A. He proved the pre trap proceedings and stated that two independent witnesses were associated with the trap proceedings. He requested the TLO (Trap Laying Officer) to not to send the shadow witness along with him. He stated that he had conversation with the appellant in his room. Although he requested but the appellant refused to reduce the demand. The appellant demanded Rs.7,000/- as the work contract was for Rs.3.50 lacs. He handed over the treated GC notes to the appellant which were accepted by him with his right hand. The appellant counted the GC notes and kept them under his left thigh. He stated that a towel was lying on the table on which the appellant was sitting. On his giving the pre-assigned signal, the CBI team entered and the independent witness namely, G.P. Singh, recovered the treated GC notes, counted and tallied them. He identified the recovered GC notes as Ex. P-1 to Ex. P-14.

In his cross-examination, he denied the suggestion that N.K Jain was known to him or that N.K Jain helped him by laying the trap. He admitted that he had worked with the appellant for about 5 years preceding the trap. He admitted that he had gone to the office of the appellant on 19.06.2006 as well but did not meet him. He denied the suggestions that on 19.06.2006 he had gone to the CBI office and met the independent witnesses. He admitted that the date on the complaint (Ex. PW6/A) was not put by him. During further cross examination, he admitted that negotiations between the contractor and CPWD officials take place for the purpose of 'justification of rate' and even after that before a contract is awarded. He admitted that on 19.06.2006, he had met some lower CBI officers. He denied meeting N.K. Jain either on 14.06.2006 or 15.06.2006. He denied the suggestion that since the appellant had not made complete payments for the earlier contracts, he wanted to take revenge and falsely implicated the appellant. He was not aware if the deductions made were reflected in the bills and accounts. He admitted that he did not file any recovery suit or initiated any arbitration proceedings.

He also deposed about the conversation recorded on a cassette and the transcription, however, the same needs no discussion as it was not relied upon by the trial court as the primary evidence was not produced in the Court.

It was also observed by the trial court that there was some overwriting on the digits of date at point 'Y' in Ex.PW6/A (Complaint) and at point 'X' on the date in ExPW4/A (Handing Over Memo).

13. Ram Swaroop Yadav, was examined as PW-4. He deposed that on instruction of the Vigilance Officer, he along with G.P. Singh, attended the office on 20.06.2006. He proved the pre trap proceedings. He deposed that he was not asked to go inside the office of the appellant and remained in the compound. After receiving the pre-determined signal from the complainant, he gave the signal to CBI team and then went inside the appellant's office along with them. On search of the appellant's room, GC notes of Rs.7,000/- were recovered from under the towel lying on the chair. He also proved the proceedings related to appellant's hand wash, towel wash and pant wash.

In cross examination, he admitted that the instruction to attend the CBI office were received by him on 19.06.2006. On that day, he went to CBI office but no trap was laid. He remained there the whole day and was asked to come on the next date i.e., 20.06.2006. He admitted that the proceedings were conducted by Insp. N.K. Jain.

14. G.P. Singh, the other independent witness was examined as PW-9. He deposed that he along with Ram Swaroop Yadav were deputed to the office of CBI. He along with Ram Swaroop Yadav waited outside the room of N.K. Jain throughout the day, who asked them to come again on the next day. N.K. Jain took them to the room of Navneet Krishnan, the TLO where they met the complainant. He proved the pre trap proceedings. He stated that after receiving the signal from the complainant both N.K. Jain & Navneet Krishnan entered the office of the appellant. Before he entered, the appellant had thrown the GC notes in the dustbin which were taken out from there probably by N.K. Jain. He also proved the proceedings related to the hand wash, towel wash and pant wash.

He was cross examined by the learned PP for the CBI. He denied the suggestion that he recovered the bribe amount from the appellant and that N.K. Jain did not recover it from the dustbin.

In his cross examination conducted on behalf of the appellant, he stated that N.K. Jain, was in-charge of the CBI raiding team. He further stated that after entering the appellant's room, he saw the treated GC notes lying on his table. N.K. Jain picked up the notes and gave it to them to tally. Subsequently, he stated that the notes were lying in the dustbin. During further cross examination, he stated that on 19.06.2006, they reported to Insp. N.K. Jain in the CBI office. On 20.06.2006, after entering the appellant's room, he saw Insp. N.K. Jain sitting on the appellant's chair who informed him that the appellant had thrown the GC notes in the dustbin.

15. Navneet Krishnan, TLO (trap laying officer) was examined as PW-8. He proved the pre-trap, trap and post-trap proceedings. He stated that on complainant's giving the pre-determined signal, he along with other team members entered the room and the bribe amount of Rs.7,000/-was recovered from under his left thigh. He also proved the hand wash taken after the appellant was apprehended. He denied the suggestion that Insp. N.K. Jain was also part of

the trap proceedings and that the washes were tampered with. He stated that he could not confirm or deny whether the Ex.PW4/K was in the handwriting of N.K. Jain. He stated that on 30.06.2006, the investigation of the case was handed over to N.K. Jain.

16. Insp. N.K. Jain, was examined as PW-13. He deposed that the investigation of the case was handed over to him on 30.06.2006. He conducted the investigations and after his repatriation, the investigation was handed over to Insp. S.Q. Ali. In his cross examination he admitted that there was no document on record to show that he was handed over the investigation by Insp. Navneet Krishnan on 30.06.2006. He also stated that he was not associated with the investigation on 20.06.2006 however, he had gone to the spot on the said date at the instructions of the Senior Officer, as a mob had collected outside the office of the appellant. He stated that he was stationed outside the office of the appellant to control the mob. He denied the suggestion that that appellant was falsely implicated by him at the instance of the complainant. He admitted his signature and handwriting on Ex.PW4/D-1 and explained that he had made the entry as the duty officer was not present. He denied that the washes were tampered with.

17. S.Q. Ali, DSP, CBI was examined as PW-14. He deposed that investigation was transferred from N.K. Jain to him in the first week of April, 2007. He prepared the transcription of the conversation (Ex PW/6B), obtained the sanction and filed the charge-sheet.

18. V.B. Ramtek, Sr. Scientific Officer, CFSL was examined as PW-10. He proved his report with respect to the test conducted on the right-hand wash, left hand wash, towel wash & pant wash as Ex.PW10/A.

19. D.K. Tanwar, Sr. Scientific Officer, CFSL was examined as PW-2 to prove his report with respect to the audio cassettes and its transcription. As noted above, the trial court has discarded the aforesaid material from consideration.

20. The appellant, in his statement recorded under Section 313 Cr.P.C., denied the prosecution case. He stated that P.G. letter was not signed as the negotiations in the form of 'justification' were not completed. He reiterated that he was falsely implicated by Insp. N.K. Jain at the instance of the complainant. In his defence, he examined total of 9 witnesses.

DEFENCE WITNESSES

21. Sudhir Kumar Chaturvedi, Asst. Engineer, CPWD was examined as DW-1. He was initially cited as PW-7 by the CBI however, later he was dropped. He deposed that on 20.06.2006, when he went to the appellant's room, he saw one person sitting on appellant's chair and who identified himself as Insp. N.K. Jain.

22. Vijay Kumar, DW-2 & Shakti Singh, DW-3 were examined to prove that the two independent witnesses namely Ram Swaroop Yadav & G.P. Singh were also involved in trap proceedings of other cases as well.

23. Balbir Singh, Driver of the appellant was examined as DW-4. He stated that on 20.06.2006, when he brought the appellant from the site at Pusa to his office, he found somebody sitting on the appellant's chair and later, he came to know, it was Insp. N.K. Jain. He also stated that, on being asked, he dropped Insp. N K Jain at his place. When he asked Mr. Jain to sign in the log book, he refused. In cross examination, he denied the suggestion that he was not in the office on the day of the incident.

24. Charanjit Pasrija, Executive Engineer, CPWD was examined as DW-6. He brought the original register of interest-bearing securities along with cash book etc. He was examined to prove that prior to the present tender, on two occasions, the appellant had taken steps for deduction of amount from the payments to be made to the complainant's company. He deposed that vide letter dated 06.12.2005 (Ex.DW6/A), the appellant had initiated steps for forfeiture of the performance guarantee money as well as the earnest money deposited by the complainant in an earlier contract. Later, on the basis of appellant's aforesaid recommendation, a letter dated 25.01.2006 for reduction/recovery of amount of Rs. 1,03,542/- was issued by the department and eventually, a sum of Rs. 99567/- was recovered from complainant's company vide documents exhibited as Ex. DW6/D and Ex.DW6/E. He further stated that deduction/recovery was ordered on account of substandard work done by the complainant's company in the earlier contract. He referred to column no. 22 of the register of interest-bearing securities to show an entry showing the forfeiture of performance guarantee furnished by the complainant's company. The forfeiture was made on 16.02.2010.

25. T.C. Meena, LDC, CBI was examined as DW-7. He brought the original visitor register for the entries made for the period 19.06.2006 to 21.06.2006 and 19.07.2006 which were marked as Mark-DW-7/B and Mark-DW-7/B1 to B3.

26. Narender Kumar, Head Constable, CBI was examined as DW-8. He proved on record the copies of pages of the Malkhana register, showing the deposit of articles on 20.06.2006 and 21.06.2006, as Ex.DW-8/1 (OSR).

27. The appellant also examined Ms. Neeru from 'Truth Labs Bangalore' with respect to cassettes and conversation however, since the trial court discarded the said evidence, her testimony needs no discussion.

28. Learned counsel for the appellant contended that there was no motive for the appellant to demand bribe. In this regard, he has referred to the testimony of the complainant where it was stated that the appellant had told the complainant that work will be awarded only if the bribe amount of Rs.7,000/- would be paid by the complainant else, the tender would be cancelled and recalled. It was submitted that the tender was neither cancelled nor recalled till 20.06.2006, i.e., the day when the complaint was made and the trap was laid. He also referred to the testimonies of Ramesh Kumar, Mehar Singh and Mahesh Kumar Sharma, where it was stated that contract could not have been awarded as there was

shortage of funds and the bid amount exceeded the estimated amount by over 10% and the same required prior approval of ICAR, the end user. It was further contended that the complainant had the motive to falsely implicate the appellant, as on two prior occasions, the appellant had taken adverse financial action against the complainant in the earlier contracts. In this regard, reference was made to the testimony of Charanjit Pasrija (DW-6) as well as the complainant' own testimony where he had stated that the appellant had earlier advised deductions in the payments to be released to the complainant's company.

ANALYSIS & CONCLUSION

29. As noted above, the electronic evidence in the form of tape record was discarded by the trial court as the primary evidence was not produced in the court.

30. A perusal of the testimonies of the Ramesh Kumar, Mehar Singh and the complainant would show that the bid submitted by the complainant's company was 52.03% above the estimated cost. The justification prepared by the department on the basis of the market rate came to be 38.90%. As per the normal procedure, the negotiations were required to be held for the 'justification of rate' but even after adding 10% variation, the bid amount was higher than the approved cost. The letter dated 31.05.2006 for deposit of P.G. money was admittedly never sent to the complainant.

31. The demand, acceptance and recovery proved by the prosecution requires closer scrutiny in light of the contention that the appellant was falsely implicated. In this regard, the events that took place on 19.06.2006 and the role of Insp. N.K. Jain assumes significance.

32. As per the testimonies of the complainant and Ramesh Kumar, the negotiations were admittedly held on 31.05.2006. The complainant stated about the demand of Rs.7000/- by the appellant as the bribe amount for award of the contract however, neither in the complaint made on 20.06.2006 nor in his testimony any specific details were mentioned as to when and how the said demand was made. If the demand was made during the negotiations, the complainant has not provided any explanation as to why no complaint was made by him to CBI till 20.06.2006.

33. So far as complaint (Ex.PW6/A) is concerned, the same did not bear any date. Ld. Counsel for the appellant contended that the date of endorsement was changed from 19th to 20th. The trial court observed that there was overwriting in the endorsement made on the said complaint at point 'Y'. The aforesaid fact is of some relevance as in his cross examination, the complainant admitted that he visited the office of CBI on 19.06.2006 and met some lower CBI officers. He also admitted that he had gone to the appellant's office on 19.06.2006.

34. Both the independent witnesses i.e., Ram Swaroop Yadav and G.P. Singh stated that they had gone to the CBI office on 19.06.2006 and waited outside

Insp. N.K. Jain's office who later asked them to come on the next day. It is worthwhile to mention that the requisition letter dated 16.06.2006 carried an endorsement dated 20.06.2006 written by Insp. N.K. Jain to the effect that both the witnesses attended the office of CBI on 19th and 20th June 2006.

35. The independent witness, Ram Swaroop Yadav deposed that on 20.06.2006, Insp. N.K. Jain introduced them to the complainant and conducted the pre trap proceedings. He stated that Insp. N.K. Jain was present throughout the raid and in fact, on the way back, he and G.P. Singh were accompanied by Insp. Jain in a Jeep of CPWD driven by a Sikh gentleman. The aforesaid aspect was corroborated by Balbir Singh (DW-4) who drove that Jeep. The testimony of Ram Swaroop regarding the role played by Insp. N.K. Jain was duly supported by the testimony of other independent witness, G. P. Singh. The other prosecution witness namely Ramesh Kumar and defence witness Sudhir Kumar Chaturvedi also stated about the presence of Insp. N.K. Jain on the spot and him conducting the proceedings.

36. Comparing the version of the above witnesses with the testimony of the Trap Laying Officer i.e., Insp. Navneet Krishnan would show that the TLO had surreptitiously denied the presence of Insp. N.K. Jain. Curiously, Insp. N.K. Jain admitted his going to the spot on 20.06.2006 on the pretext of controlling some mob, a circumstance not stated by any other witness and for which no other material was brought on the record. Insp. N.K. Jain maintained that he did not enter the office of the appellant and remained outside, a version which is in stark contrast to the deposition of independent witnesses.

37. Coming to the aspect of demand. The complainant has not given any specifics of the initial demand either in his complaint or in his deposition. On the day of raid, he intentionally asked the TLO not to send the independent witness along with him to the appellant's office room. The independent witness remained outside. In these circumstances, the complainant remained the solitary witness to prove the demand and acceptance. He stated that he had a conversation with the appellant and requested him to reduce the demand which was refused. He never unequivocally stated that the appellant demanded the bribe amount. According to him, the appellant took the bribe amount in his right hand and kept it under his left thigh on a towel. Thereafter, he gave a signal and trap team came inside and recovered the bribe amount.

38. In A. Subair v. State of Kerala reported as (2009) 6 SCC 587, it was held that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and until that is established , the accused should be considered to be innocent.

39. In P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and Anr. reported as (2015) 10 SCC 152, it was held as under:

"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence Under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two Sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person Accused of the offence Under Sections 7 and 13 of the Act would not entail his conviction thereunder."

40. In somewhat similar circumstances, in Mukhtiar Singh (since deceased) through his L.R. v. State of Punjab reported as (2017) 8 SCC 136 where no specifics of earlier demand were mentioned and a senior police officer was accused of helping the complainant, Supreme Court while acquitting the accused held as under:

"24. It would thus be patent from the materials on record that the evidence with regard to the demand of illegal gratification either of Rs. 3,000/- which had been paid or of Rs. 2,000/- as made on the day of trap operation is wholly inadequate to comply with the pre-requisites to constitute the ingredients of the offence with which the original Accused had been charged. Not only the date or time of first demand/payment is not forthcoming and the allegation to that effect is rather omnibus, vague and sweeping, even the person in whose presence Rs. 3,000/-at the first instance is alleged to have been paid i.e. Santosh Singh Lambardar, has neither been produced in the investigation nor at the trial. In other words, the bald allegation of the complainant with regard to the demand and payment of Rs. 3,000/- as well as the demand of Rs. 2,000/- has remained uncorroborated. Further to reiterate, his statement to this effect lacks in material facts and particulars and per se cannot form the foundation of a decisive conclusion that such demand in fact had been made by the original accused. Viewed in this perspective, the statement of complainant and the Inspector Satpal, the shadow witness in isolation that the original Accused had enquired as to whether money had been brought or not, can by no means constitute demand as enjoined in law as an ingredient of the offence levelled against the original accused. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the Act.

25. In addition thereto, not only the prosecution version of demand and acceptance of illegal gratification in the police station seems to be unusual, contradictions of the witnesses, PW-1, PW-2 and PW-5 with regard to the location of the transaction relating to Rs. 2,000/- also renders it doubtful. It is also noticeably unusual that the currency notes when allegedly handed over by the complainant to the original accused, the same instead of being keenly kept with him, were placed casually in the card board box placed on his table. Though the original accused, apart from imputing his false implication at the instance of Superintendent of Police Cheena, said to be the relative of the complainant could not adduce any evidence to consolidate the same, the fact remains that this

officer at the relevant point of time was indeed Superintendent of Police at Mohali and was the superior of PW5 who led the trap operation."

41. So far as the recovery is concerned, material contradictions appear in the testimony of the two independent witnesses. Whereas Ram Swaroop Yadav stated that the bribe amount was recovered from under the towel lying on the chair, the other independent witness G. P Singh stated that the recovery was made from a dustbin. There is also discrepancy as to who recovered the bribe amount. Ram Swaroop had not stated as to who recovered the amount but he stated that the appellant was caught hold by Insp. N.K. Jain and Insp. Navneet Krishnan, who informed that the money was recovered from the chair. On the other hand, both Insp. N.K. Jain and Insp. Navneet Krishnan stated it was G P Singh, who recovered the amount from the towel. Interestingly, G.P. Singh deposed that it was Insp. N.K. Jain who recovered the amount from a dustbin.

42. It has come in the testimony of the prosecution witnesses that when they entered the appellant's room, they saw that he was apprehended and Insp. N.K. Jain was sitting on the appellant's chair. The appellant had also given suggestions on the same lines.

43. In Selvaraj v. State of Karnataka reported as (2015) 10 SCC 230, Supreme Court while agreeing with the view taken by the trial court, disbelieved the evidence of recovery on account of contradictions about the place of recovery. The following observations are apt for the present case:

"15. ....PW-1 has stated that he found currency notes on the table, and the accused was standing behind the table. Whereas K.N. Eregowda, PW-2, has stated that the currency notes were kept by the accused beneath the book on the table. Another witness L. Somashekara, PW-8, IO, has stated that he recovered the money from the drawer of the table. The versions given by the three witnesses are different from each other. Even if we ignore the contradictions between the versions of PW-1 and PW-2, the contradiction with respect to place of recovery of money whether it was inside the drawer of table or was lying on the table beneath the book is material one and could not have been ignored"

44. It has come on the record that the complainant was a contractor for CPWD for about 5 years. He was awarded contracts previously. He admitted that the appellant recommended deductions in earlier contracts and he neither complained about the appellant nor filed any recovery suits. The defence witness Charanjit Pasrija (DW-6) proved on record that sum of Rs.99,567/- was recovered from the complainant's company on the recommendations made by the appellant for the sub-standard quality of work done in using GS sheets of different thickness than required. He also proved the letter dated 06.12.2005 (Ex.DW-6/A) issued by the appellant, where in relation to another contract, forfeiture of the PG and earnest money deposited by the complainant was recommended. On the aforesaid recommendation, the department ultimately

deducted those amounts in the year 2010 vide Ex.DW-6/B and Ex.DW-6/C. In this regard, the trial court erroneously recorded that since the final deductions were made subsequently therefore, they were irrelevant. The trial court failed to notice that although the deductions were made in the year 2010 but the process was initiated on the basis of recommendations made by the appellant even prior to the tender in question. In both the contracts, the deductions were recommended prior to the tender involved in the present case.

45. In the facts and circumstances of the case, the solitary testimony of the complainant to prove the demand and acceptance is not inspiring enough. Even, the recovery is shrouded with contradictions.

46. I also find considerable force in the submissions of learned counsel for the appellant that the conduct of the Investigating Agency in hiding the role of Insp. N.K. Jain raises considerable suspicion on the genuineness of the entire trap proceedings.

47. The reliance placed by learned counsel for the CBI on the decisions in B. Noha v. State of Kerala & Anr. reported as (2007) 1 SCC (Cri) 711 and State of Gujarat v. Navinbhai Chandrakant Joshi & Others reported as (2018) 9 SCC 242, is misplaced as in the captioned cases, there was voluntary acceptance of money and the accused failed to give any satisfactory explanation. As noted above, the testimony of the complainant is not reliable enough. Also, the reliance placed by him on the decision in Narayana v. State of Karnataka reported as (2010) 14 SCC 453 is of no help as in the captioned case, the discrepancies were held to be minor. Learned counsel also referred to the decisions in Hazari Lal v. The State (Delhi Admn.) reported as AIR 1980 SC 873 and State of U.P. v. Zakaullah reported as AIR 1998 SC 1474 to urge that testimony of official witnesses can be relied upon. In the present case, as held above, the testimony of Insp. Navneet Krishnan does not inspire confidence for the reason that not only there are material contradictions on the aspect of recovery but also on his attempt to hide the presence and role of Insp. N.K. Jain at the time of raid proceedings. Lastly, reliance was again misplaced on the decision in State of Andhra Pradesh v. R. Jeevaratnam reported as 2004 (6) SCC 488 to contend that the appellant failed to rebut the presumption under Section 20 of PC Act. It is settled law that the accused is required to rebut the presumption once the prosecution is able to prove that he accepted the gratification (other than legal remuneration). In this regard, it is profitable to refer to the decision of the Supreme Court in C.M. Girish Babu v. CBI, Cochin, High Court of Kerala, reported as (2009) 3 SCC 779 where it was held as under:

"21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification.

22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.

"4......It is well established that where the burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence of proof his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4 under the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur verdict of guilt. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden shifts to prosecution which still has to discharge its original onus that never shifts, i.e.; that of establishing on the whole case the guilt of the accused beyond a reasonable doubt." (Emphasis supplied)

(See V.D. Jhingan v. State of U.P. at AIR p. 1764, para 4)"

48. Resultantly, this court is of the view that the prosecution has failed to prove its case against the appellant. The appellant succeeds and his appeal is allowed. The appellant's conviction is set aside and he is acquitted of all the charges. His bail bonds and surety bonds are discharged.

49. Accordingly, the appeal is disposed of along with the pending application.

50. A copy of this judgment be communicated to the trial court.