SPECIAL LEAVE PETITION PREFERRED AGAINST THE JUDGMENT AND REGISTERED AS SLP(CRI.) NO.2769/11 HAS BEEN DISMISSED BY THE APEX COURT ON 05.09.2011.

HIGH COURT OF MADHYA PRADESH : JABALPUR

Present : **Hon. Shri Justice R.C. Mishra**
Hon. Smt. Justice Vimla Jain

CRIMINAL APPEAL NO. 522/2002

Krishna Kumar Verma, aged about 51 years,
son of Phool Chand Verma,
Resident of Opposite Bargi Colony,
Chhindwara Road, Narsinghpur ... **Appellant**

vs.

State of M.P., through SPE (Lokayukta),
Jabalpur ...**Respondent**

Shri Anil Khare with Ms. Namrata Kesharwani, Advocates for the appellant.

Shri Aditya Adhikari, Special Public Prosecutor for the respondent/Special Police Establishment (Lokayukta).

Date of Hearing : **20.10.2010**

Date of Judgment : **14.12.2010**

JUDGMENT

The appellant, though charged with the offences under Section 7 and in the alternative under Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short "the Act"), stands convicted under Section 7 of the Act and sentenced to undergo imprisonment for 1 year and to pay a fine of Rs.1000/- and in default, to suffer S.I. for 2 months. The corresponding judgment, passed on 19.03.2002 by the Special Judge (under the Act) at Narsinghpur in Special Criminal Case No.3/1999, is the subject matter of challenge in this appeal.

2. The following facts are not in dispute -

(**a**) At the relevant point of time, the appellant was posted as Assistant Grade II in Singhpur Sub-Distribution Centre of MPEB at Narsinghpur whereas the complainant Rajesh Kumar

Nema (PW5) [hereinafter referred to as the 'complainant') was working as Assistant Grade III in the office of J.E. (Junior Engineer), MPEB, Narsinghpur (City). Both of them were the officer bearers of the M.P. Vidyut Karmchari Sangh Federation, a recognized Employees' Union. The complainant was the Secretary whereas the appellant was Spokesman of the Union. However, the complainant was expelled from the primary membership of the Union on the ground that he had not deposited a total amount of Rs.15,500/- collected as subscription from the members. The corresponding resolution was passed by the Executive Body of the Union on 18.08.1998.

(**b**) Vide office order-dated 20.12.1997 (Ex.P-5); the S.E. (Superintending Engineer) had allotted certain work of the commercial section including inspection of Distribution Centres to the appellant. Thereafter, vide letter-dated 15.06.1998 (Ex.P-6), J.E. namely L.P. Khateek (PW9) was informed by S.E. that the inspection of city office of MPEB at Narsinghpur would be carried out during the period from 17.06.1998 to 19.06.1998. As per instruction of S.E., the appellant inspected the office and noticed a number of irregularities including that the cash book had not been maintained by the complainant during the period from 12.05.1998 to 17.06.1998. Vide order-dated 27.06.2008 (Ex.P-7), remarks made by the appellant in the Inspection Note were communicated by the S.E. to the J.E. In reply (Ex.P-21), the J.E., while informing that the cash book was completed on 18.06.1998, proceeded to explain that only entries relating to cash remittance advice (CRA) loans could not be made in the cash book as the complainant had remained on a long leave. However, on 19.09.1998, the J.E.

issued a notice to the complainant, copy of which is placed on record as Ex.P-24, to show-cause as to why suitable action should not be taken against him for non-maintenance of cash-book during the aforesaid period. Ultimately, in the light of his reply, S.E., by way of notice, draft of which is available on record as Ex.P-1, asked the complainant to show-cause as to why penalty of stoppage of two increments should not be imposed.

3. The prosecution case, in short, may be stated thus -

(**i**) On 23.12.1998, a written complaint (Ex.P-3) was made to S.D.A. Tiwari (PW14), In-charge S.P. (Superintendent of Police), Special Police Establishment [Lokayukt] at Jabalpur, to the effect that the appellant had been demanding a sum of Rs.1000/- as illegal gratification from the complainant for giving a favourable report presumably to save him from the proposed penalty. The S.P., in turn, directed Inspector S.S. Pandey (PW11) to hand over a mini Tape Recorder with cassette to the complainant for the purpose of recording the conversation between him and the appellant. On the following day only, the complainant recorded his talks with the appellant on the tape and informed the S.P. accordingly. Immediately thereafter, the S.P. constituted a trap party comprising Dy. Superintendent of Police M.B.S. Jaggi (PW13), Inspectors S.S. Pandey (PW11) & Suman Kumar Burman (PW15), Head Constable Vishnu Singh (PW1) and Constables Jahar Singh (PW2) & Makhan Singh (PW12) and the *panch* witnesses viz. G.R. Chanderiya (PW4) and Ramesh Chand Jain (PW8), both posted as Asstt. Engineers in the Irrigation Department, for apprehending the appellant red-handed while taking bribe from the complainant.

(**ii**) On 24.12.1998, the trap party led by S.D.A. Tiwari started for Narsinghpur in a Govt. Jeep. In the transit, near *Duladeo Mandir*, the complainant met the party and submitted another complaint (Ex.P-4) along with the tape-recorded conversation. Inspector S.K. Burman (PW15) recorded a *Dehati Nalishi* (PW28) to register a case under Section 7 of the Act. The complainant produced ten currency notes of the denomination of Rs.100/- each. The number of the notes were noted down and phenolphthalein powder was smeared thereon. After observing the usual formalities and preparing documents pertaining to phenolphthalein test, the tainted notes were placed in the pocket of jerkin worn by the complainant, who was also instructed not to touch the notes at any earlier point of time and to give a signal by removing spectacles after handing over the amount to the appellant.

(**iii**) The trap party accompanied by the complainant proceeded to the office of S.E. at Narsinghpur where the appellant was posted. As the appellant was not found in the office, the complainant was asked to search him. At about 5.30 p.m., the complainant returned and informed that he had given currency notes to the appellant, who could be traced by him near Subhash Park while proceeding on a scooter towards his house situated at Chhindwara Road and further that the bribe money was kept by the appellant in the back pocket of his trouser. Thereupon, all the members of the party immediately started in the jeep for Chhindwara Road where the appellant was seen going on a scooter. The vehicle was intercepted and identity of members of the trap party was disclosed. The appellant was then taken to courtyard of the garage of one Lakhan Singh Rajput. During search, all the ten

currency notes treated with phenolphthalein were recovered from the back pocket of appellant's trouser. They were counted by *panch* witness *viz*. R.C. Jain (PW8) who also tallied their numbers with the details recorded in the pre-trap *panchnama* (Ex.P-19). The money was duly seized and hands of the appellant were washed with solution of Sodium Carbonate that turned pink. Its sample was also seized. Since it was getting dark, the remaining proceedings were carried out at the office of the appellant where hands of R.C. Jain as well as the complainant and back pocket of appellant's trouser were washed with the solution and samples of resultant solutions were kept in separate bottles and sealed.

(**iv**) After completing the investigation and obtaining sanction (Ex.P-25), charge sheet was submitted before the Special Court (under the Act) at Narsinghpur.

4. On being charged with the offences, the appellant pleaded false implication due to prevailing animosity in view of the fact that he was instrumental in initiation of departmental action against the complainant. According to him, he had never demanded nor accepted any amount by way of bribe and further, there was no occasion for him to do so as he was not in a position to waive the show cause notice or to exonerate the complainant from the liability for not maintaining the cash book. In his examination, under Section 313 of the Code of Criminal Procedure (for brevity 'the Code'), while admitting that amount of Rs.1,000/- recovered from his pocket was handed over to him by the complainant, he asserted that the amount was received by him in pursuance of the resolution passed by the Union requiring the complainant to pay the outstanding amount of Rs.15,500/- to him in installments of Rs.1000/-

per month. In order to substantiate the defence, Ganesh Kumar Chaturvedi (DW1), the then Divisional Secretary of the Union, was called in evidence.

5. Legality and propriety of the impugned conviction have been challenged *inter alia* on the following grounds –

(i) Non-existence of motive for demand.

(ii) Non-production of the tape-recorded evidence before the trial Court.

(iii) Material contradiction regarding the form of illegal gratification.

(iv) Absence of power to do the favour by saving the complainant from the proposed penalty.

(v) Establishment of the defence by preponderance of probabilities.

In response, learned Special Public Prosecutor has contended that the conviction, based on the statutory presumption under Section 20(1) of the Act, is well merited. Placing reliance on the decision of the Apex Court in **B. Noha v. State of Kerala (2006) 12 SCC 277**, he has pointed out that once voluntary and conscious acceptance of the money is admitted, there is no further burden cast on the prosecution to prove by direct evidence - demand or motive. Attention has also been invited to the meaning of expression "gratification" as explained by the Supreme Court in **Madhukar Bhaskarrao Joshi v. State of Maharashtra (2000) 8 SCC 571**).

6. Before adverting to the merits of rival contentions in a proper perspective, it may be seen that recovery of currency notes smeared with phenolphthalein powder from the back pocket of the appellant's

trouser is not disputed. Even otherwise, the prosecution evidence comprising of the statements of the official members of the trap party namely In-charge S.P. S.D.A. Tiwari (PW14), Dy. S.P. M.B.S. Jaggi (PW13), Inspectors S.K. Burman (PW15) & S.S. Pandey (PW11), Head Constable Vishnu Singh (PW1), Constables Jahar Singh (PW2) and Makhan Singh (PW12) and *panch* witnesses viz. G.R. Chanderiya (PW4) and Ramesh Chand Jain (PW8) as to seizure of the tainted money from the possession of the appellant did not suffer from any serious infirmities. The very undisputed fact that the currency notes reached the hands of the accused served as a sufficient corroboration to the evidence relating to trap. [See. **Madhukar Bhaskarrao Joshi**'s case (supra)].

7. In the light of the defence that pursuant to the decision of the Union, he, as the Spokesman thereof, had received the amount in question, on its behalf, as one of the installments payable by the complainant against the outstanding amount of Rs.15,500/-, the matter lies in a very narrow compass. The core question, therefore, is as to whether the appellant had been able to rebut the presumption, under Section 20(1) of the Act ?

8. It is true that the tape-recorded conversation was not played before the trial Court but *panch* witnesses G.R. Chanderiya (PW4) and Ramesh Chand Jain (PW8) duly corroborated the fact that the transcripts (Ex.P-8) were prepared by Inspector S.K. Burman (PW15) after replaying the tape recorder in their presence only. Moreover, authenticity of the transcripts, suggesting demand for illegal gratification for getting the department action closed by writing a favourable note as well as the agreement to pay the same at about 4 p.m. on 24.12.1998 in the office where the appellant was posted, was not subjected to challenge. In such a situation,

non-replay of the tape recorder before the trial Court was inconsequential.

9. As pointed out already, veracity of the demand for illegal gratification has also been questioned in view of the following facts -

(i) No apparent motive could be attributable to the appellant, who had no authority to do the favour as desired by the complainant.

(ii) The assertion made by the complainant (PW5), in his sworn testimony, that the appellant had asked for a party entailing expenditure of Rs.1,000/- was apparently inconsistent with the recitals of the complaints (Ex.P-3 and P-4) suggesting that the appellant had demanded a cash amount of Rs.1000/- as bribe.

10. Highlighting the aforesaid facts, learned counsel for the appellant has strenuously contended that mere recovery divorced from circumstances under which it was paid was not sufficient to give rise to the statutory presumption under Section 20(1) of the Act. According to him, the appellant was not required to prove the explanation for receiving the money beyond a reasonable doubt. To fortify the contention, reference has been made to the following precedents -

(i) **Suraj Mal v. State (Delhi Administration) AIR 1979 SC 1408**

(ii) **Punjabrao v. State of Maharashtra AIR 2002 SC 486**

(iii) **State of A.P. v. T. Venkateswara Rao AIR 2004 SC 1728**

(iv) **T. Subramanian v. State of Tamil Nadu AIR 2006 SC 836**

(v) **C.M. Girish Babu v. CBI (2009) 3 SCC 779**

11. At the outset, it may be pointed out that the inconsistency regarding the form of demand to be met by the appellant was of no consequence in view of the meaning of word 'Gratification', given in explanation (b) appended to Section 7 of the Act and elucidated in **Madhukar Bhaskarrao Joshi**'s case (above). For a ready reference, the relevant observations may be extracted thus :-

> *"In Black's Law Dictionary, "gratification" is defined as "a recompense or reward for services or benefits, given voluntarily, without solicitation or promise". But in Oxford Advance Learner's Dictionary of Current English the said word is given the meaning "to give pleasure or satisfaction to". Among the above two descriptions for the word "gratification" with slightly differing nuances as between the two, what is more appropriate for the context has to be found out. The context in which the word is used in Section 4(1) of the Act of 1947 is, hence, important. As the wording on the relevant portion employed in the corresponding provision in the PC Act 1988 [Section 20(1)] is identical we would reproduce that sub-section herein:*
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> > *"20. (1) Where, in any trial or an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate."*

…..

> *… 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".*

In this view of the matter, the assertion made by the complainant (PW5) that while assuring that the increments would not be stopped, the appellant had demanded a party necessitating expenditure of Rs.1,000/- was immaterial as, admittedly, the amount in question was received by him only. Further, the contention that the appellant was not authorized to waive/withdraw the notice requiring the complainant to show cause against the proposed penalty was also misconceived in view of the explanation (d) appended to Section 7 of the Act *(which corresponds to the last explanation appended to Section 161 of the IPC [omitted by Prevention of Corruption Act, 1988, S. 31])* that reads as under -

> *"A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.*

12. In **Indur Dayal Das v. State of Bombay AIR 1952 Bom 58**, a Division Bench of the Bombay High Court appreciated the true import of the explanation in the following terms -

> *"From the last explanation to the section, it is clear that it is not necessary in order to constitute an offence under section 161 that the act for doing which the bribe is given should actually be performed. It is sufficient if a representation is made that it has been or that it will be performed and a public servant, who obtains a bribe by making such representation, will be guilty of the offence punishable under this section, even if he had or has no intention to perform and has not performed or does not actually perform that act. A representation by a person that he has done or that he will do an act impliedly includes a representation that it was or is within his power to do that act."*

13. **Suraj Mal**'s case is an authority for the proposition that in a case of bribery, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. However, in the case on hand, quite apart from the admission, there is clear, cogent and creditworthy evidence to show that the appellant had accepted the tainted money from the complainant. In **State of A.P. v. V. Vasudeva Rao, (2004) 9 SCC 319**, while distinguishing the decision in **Suraj Mal**'s case, the Supreme laid down the under-mentioned guiding principles for invoking the statutory presumption in a trap case -

> *(a) the expressions "may presume" and "shall presume" are defined in Section 4 of the Indian Evidence Act, 1872 (in short "the Evidence Act"). The presumptions falling under the former category are compendiously known as "factual presumptions" or "discretionary presumptions" and those falling under the latter as "legal presumptions" or "compulsory presumptions". When the expression "shall be presumed" is employed in Section 4(1) of the Act, (that corresponds to Section 20(1) of the Act) it must have the same import of compulsion.*

(b) When the sub-section deals with legal presumption, it is to be understood as in terrorem i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc. if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption under Section 4 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act.

(c) Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the court is only applying a process of intelligent reasoning, which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in law of evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the court can draw an inference and that would remain until such inference is either disproved or dispelled.

14. Turning to the facts of the case, it may be observed that the case of the defence hinged upon the evidence of Ganesh Kumar Chaturvedi (DW1), referred to as the Divisional Secretary of the Union in the letter-dated 01.09.1998 (Ex.D-3), informing the complainant about his expulsion from the primary membership.

15. Even though, Ganesh Kumar Chaturvedi came forward to substantiate the plea that by way of a subsequent letter-dated

09.09.1998, (copy of which is tendered in evidence as Ex.D-2), the complainant was directed to deposit at least a sum of Rs.1,000/- per month against the amount of Rs.15,500/- collected by him as subscription of the Union yet, fact of the matter is that the appellant was trapped on 24.12.2008 i.e. nearly 3½ months after his so-called authorization to receive the installments on behalf of the Union. This apart, Ganesh Kumar further admitted that (**i**) at the time of the incident, the complainant was the Secretary of the Union, (**ii**) immediately after the trap, the copies of the letters (Ex.D-2 and D-3) were not forwarded to the Special Police Establishment (Lokayukta) and (**iii**) at the relevant point of time, one L.P. Kahar was working as the treasurer of the Union and neither at an earlier point of time nor at any subsequent occasion, no other office bearer was authorized to recover the outstanding amount of subscription payable to the Union. Moreover, neither any byelaw conferring the authority on any office bearer of the Union to collect the amount of subscription/to recover the arrears thereof nor any resolution passed by the Union forming basis of the letter (Ex.D-2) was brought on record. Further, no acknowledgment evidencing receipt of the letter (Ex.D-2) by the complainant was tendered in evidence. Besides this, complainant's non-insistence for issuance of receipt even after paying an amount of Rs.1000/- to the appellant was also apparently improbable in view of strained relations between them.

16. Citing the decision in **Punjabrao**'s case (supra), learned counsel has contended that even appellant's failure to offer any explanation at the time when the amount was seized would not have assumed any significance as in the light of other evidence brought on record, the defence raised by him in the examination, under Section 313 of the Code, was probable, reasonable and acceptable. For this, attention has been invited to the fact that not

only the official members of the trap party namely Vishnu Singh (PW1), Jahar Singh (PW2), S.S. Pandey (PW11), S.D.A. Tiwari (PW14) and S.K. Burman (PW15) but also *panch* witnesses viz. G.R. Chanderiya (PW4) and Ramesh Chand Jain (PW8) candidly accepted the suggestion that on being apprehended, the appellant had asserted that the amount taken by him related to subscription of the Union. Reference has also been made to the admissions of In-charge S.P. S.D.A. Tiwari (PW14) and Inspector S.K. Burman (PW15) to the effect that sometimes after the trap, the appellant had visited the office of SPE (Lokayutka) and had shown certain documents including the letter (Ex.D-2). However, there is nothing on record to indicate as to what follow up action was suggested by the General Secretary namely D.P. Pathak, to whom the letter (Ex.D-3) was endorsed for recovery of the outstanding amount from the complainant. Furthermore, Ganesh Kumar (DW1) unequivocally admitted that on behalf of the Union, no representation was made before the Investigating Agency to save the appellant from the proposed prosecution. According to him, the letters (Ex.D-2 & D-3) were also not handed over to the Agency.

17. Thus, in the face of the aforesaid admissions made by Ganesh Kumar Chaturvedi, the defence was rightly rejected by learned trial Judge as inherently improbable in view of the background facts and circumstances leading to the trap. In this regard, the following illuminating observations made by the Supreme Court in **Madhukar Bhaskarrao Joshi**'s case (above) may usefully be quoted -

> *"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."

18. The other decisions rendered in the cases of **Venkateswara Rao**, **T. Subramanian** and **C. M. Girish Babu** are distinguishable on facts. In **Venkateswara Rao**'s case, the Apex Court dismissed the appeal against acquittal based on the finding that the contract in respect of which, the accused-public servant had allegedly demanded and obtained an illegal gratification of Rs.400/- for awarding work order to the complainant, was under consideration whereas in **T. Subramanian**'s case, the explanation given by accused immediately after being trapped that the money was given by the complainant towards lease rent and not as bribe for securing *patta* in favour of complainant was found to be plausible and, therefore, sufficient to rebut the statutory presumption and in **C.M. Girish Babu**'s case, the accused was able to prove his case by test of preponderance of probability that he was made to believe that the amount paid to him was towards repayment of loan taken by the prosecution witness from another accused.

19. To sum up, we are of the opinion that learned trial Judge did not commit any illegality in holding that the appellant had failed to disprove the presumption. As such, the question posed above is answered in the negative.

20. For these reasons, none of the contentions raised against legality and propriety of the conviction under challenge deserves acceptance.

21. This brings us to the question of sentence. Taking into consideration the nature of allegations found proved, social impact of the crime and other relevant circumstances of the case, interests

of justice would be met if the term of custodial sentence is reduced to the minimum prescribed under the statute.

22. In the result, the appeal is allowed in part. The impugned conviction and the fine sentence are hereby affirmed. However, the term of consequent sentence of imprisonment is reduced from 1 year to 6 months.

23. Appellant is on bail. He is directed to surrender to his bail bonds before trial Court on or before 09.02.2011 for being committed to custody for undergoing remaining part of the sentence.

Appeal partly allowed.

(R.C. Mishra)
JUDGE
14.12.2010

(Smt. Vimla Jain)
JUDGE
14.12.2010