

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.A. No.776/2003**

Date of Decision : 31st March, 2017

VARUN DAVE APPELLANT

Through Ms.Geeta Luthra, Sr. Adv. with
Ms.Parul Sharma, Adv.

Versus

STATE RESPONDENT

Through Mr.Panna Lal Sharma, Additional
Public Prosecutor for the State.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J

1. The present appeal has been filed by the appellant aggrieved by the judgment of conviction dated 15th November, 2003 convicting the appellant finding him guilty under Sections 7 & 13 (1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act, 1988" for brevity) and order on sentence dated 19th November, 2003 vide which the sentence was passed against the appellant to undergo rigorous imprisonment for a period of one year and also to pay fine of Rs.3,000/-, in default further RI for three months on each count for his conviction under Sections 7 & 13(1)(d) of the PC Act, 1988. The substantive sentence of imprisonment on both counts were ordered to run concurrently.

2. The facts in brief are that a complaint was received by the Anti-Corruption Branch from the complainant Pawan Kumar to the effect that the appellant Varun Dave, while working as Inspector in the Food Supplies and Consumer Affairs Department, Delhi Administration, demanded bribe of Rs.1,500/- for the purpose of

granting food grain licence to him with further word of caution that in case of non-payment of the said amount of bribe, the application of the complainant would be cancelled. Inspector M.S. Sangha posted in Anti-Corruption Branch along with one government servant as panch witness, laid a trap for apprehending the accused red handed at the time of accepting the bribe. The investigating officer and the complainant took three notes of the denomination of Rs.500/- each and explained it to the panch witness with regard to the manner in which the same were to be given to the accused. The said currency notes were treated with phenolphthalein powder and the complainant and panch witness were explained that if a person would touch those notes treated with phenolphthalein powder and the finger of such person was dipped in colourless solution of sodium carbonate, that solution would turn pink. A practical demonstration of the same was given by raiding officer and thereafter the notes were returned to the complainant for the purpose of giving the same as bribe to the accused. Thereafter, the complainant along with the investigating officer and panch witness reached the pre-fixed place by the accused i.e. Food & Supply Office, Vikas Bhawan when the complainant requested the accused to do his work whereupon the accused told him that fee would be required. The accused did not specify the amount of fee and told the complainant that he had already informed the amount. The complainant, thereafter, gave the said three currency notes to the accused who accepted the same with his right hand and without counting them, kept the same in his front left side shirt pocket upon which the panch witness gave a pre-arranged signal to the raiding party. Inspector M.S. Sangha and others rushed inside and the complainant and panch witness informed the accused that he had

accepted bribe of Rs.1,500/- from the complainant. Before conducting the search of the accused, the said raiding officer then disclosed his identity and offered his own search to the accused. Inspt.M.S. Sangha, the raiding officer then recovered the currency notes treated with phenolphthalein which upon comparison, were tallied with the numbers already mentioned in pre-raid proceedings. Thereafter, solution of sodium carbonate was prepared at the spot and washes of the hands of the accused as well as his shirt pocket were taken into the solution which turned pink. The solution was then poured into four different bottles and sealed. The bribe money was recovered and seized by the raiding officer; post raid report was prepared at the spot and the ruqqa was sent to anti-corruption branch through a constable for the purpose of registration of FIR. It emerges from the record that charges under Sections 7/13(1)(d) of the Prevention of Corruption Act, 1988 were framed against the accused to which he pleaded not guilty and claimed trial.

3. The appellant was held guilty by the learned Special Judge, Delhi and by an order dated 15th November, 2003, sentenced to undergo rigorous imprisonment for a period of one year and also to pay fine of Rs.3,000/-, in default further RI for three months on each count for his conviction under Sections 7 & 13(1)(d) of the PC Act, 1988, the present appeal has been filed. The substantive sentence of imprisonment on both counts were ordered to run concurrently.

4. The main ground of challenge is that there is no legal evidence against the appellant justifying his conviction. The learned Special Judge did not appreciate the fact that PW 8-Sh.Rakesh Bihari the then Commissioner, Food & Supply, did not

apply his mind before signing sanction. Grant of sanction must have been by the competent authority and that the sanction granted was invalid. Sanction did not state as to what the authority has examined; whether it examined statements of witnesses, exhibits, the manner in which the raid was conducted etc. inasmuch as the order merely stated that the authority examined the materials placed before it. The sanction was fortiori inasmuch as the same was accorded on the dictates of investigating agency as well as on the basis of material which the investigating agency sought to produce before the sanctioning authority. The dictum of the Hon'ble Supreme Court in ***Mansukhlal Vithaldas Chauhan Vs. State of Gujarat (1997) 7 SCC 622*** was not taken into consideration by the court below. The impugned order was based on conjectures, surmises and assumptions inasmuch as it failed to take into consideration the fact that the statement of panch witness and the complainant was that the accused demanded and the complainant paid the alleged sum of Rs.1,500/- as Food Grain Licence Fee and that none of the witnesses used the words 'bribe' or 'illegal gratification'. It was established on record that the licence fee which the complainant had to pay for the licence, was Rs.1,500/- and the alleged bribe money was also stated to be Rs.1,500/-. The complainant himself established the defence case when in the cross-examination, he stated "it is incorrect to suggest that I have paid the money to the accused in the shape of bribe and not in the shape of fee".

5. In support of her contention, learned senior counsel for the appellant relies on the pronouncements in ***Har Bharosey Lal Vs. State of U.P. 1988 Crl.L.J. 1122 Allahabad H.C.; Munsukhlal Vithaldas Chauhan Vs. State of Gujarat 1997 (7) SCC 622;***

Bishambhar Dayal Srivastava Vs. State of U.P. 1994 III All HC; CBI Vs. Ravindra Singh 1995 JCC 217 DIH; Tirath Prakash Vs. State DLH (2001)(3)VIII; Bhisham Kumar Vs. State 79 (1999) DLT 14 DLH; V. Venkata Subbarao Vs. State 2006 (13) SCC 305; Sunil Kumar Sharma Vs. State 139 (207) DLT 407 DIH; Som Prakash Vs. State 1992 Suppl SCC 428; Trilok Chand Vs. State of Delhi AIR 1977 SC; T. Subramaniam Vs. State of Tamil Nadu AIR 2006 SC 836; Punjabra Vs. State of Maharashtra 2001 (3) Crimes 309 S.C. & Subhash Chand Chauhan Vs. C.B.I. 117 (2005) DLT 187 DIH.

6. Per contra, argument advanced by learned Additional Public Prosecutor for the State is that the appellant was rightly held guilty under Sections 7 & 13 (1)(d) of the Prevention of Corruption Act, 1988. It was submitted that on a complaint recorded by the investigating officer, a trap was laid for apprehending the accused red handed while accepting bribe. It is further submitted that upon receiving the signal from the panch witness, the members of the raiding party rushed to the spot and Inspt. M.S. Sangha & the raiding officer recovered the currency notes which were treated with phenolphthalein which upon comparison, tallied with the numbers already mentioned in pre-raid proceedings and when dipped in the solution, turned pink.

7. I have heard learned senior counsel for appellant as well as learned Additional Public Prosecutor for the State. I have also perused the judgments cited by the learned senior counsel for the appellant.

8. The prosecution had examined as many as thirteen witnesses namely PW 1 Jamwant; PW 2 Ct.Mahender Singh; PW 3 Deepak Srivastav; PW 4 S.M.Sharma; PW 5 Kapil Dev Trehan; PW 6

Inspt.Mohammad Abbas Salam; PW 7 SI Subeer ; PW 8 Sh.Rakesh Bihari; PW 9 Sh.Pawan Kumar & PW 10 Inspt.M.S. Sanga. The statement of the accused Varun Dave was recorded under Section 313 of the Cr.P.C.

9. It emerges from the record that the appellant was on bail throughout the trial and at the time of filing of appeal. Vide order dated 27th November, 2003 passed by this Court, the substantive sentence of the appellant was suspended till during the pendency of the appeal upon executing a personal bond in the sum of Rs.10,000/- with one surety of the like amount to the satisfaction of the trial court.

10. Upon hearing the rival contentions of the parties at length, evidence led is being examined.

11. PW 9 Pawan Kumar in his statement stated that on 25th January, 2000, when he applied through Food & Supply Officer (FSO) for food grain licence in the department of Food & Supply, he was directed by the FSO to contact Inspt.Varun Dave and that he pursued the matter in the office of Food & Civil Supplies many times, however he could not get the food grain licence. This witness further stated that on 4th July, 2000, he visited the said office and contacted the accused Varun Dave who asked him whether he had the fees. Thereafter, this witness asked the accused as to how much money had to be paid as fees upon which the accused replied that it was Rs.1,500/-. PW 9 stated that as nothing was done by the accused, he approached the FSO that his godown may be got inspected upon which the FSO apprised him that his application had been marked to Inspt.Varun Dave. Thereafter, this witness after reading a sticker, reached Old Secretariat and reported his grievance and harassment in writing. Thereafter, this

witness lodged his complaint (Ex.PW 1/A) bearing his signature at point 'B', to the Anti-Corruption Branch which was lodged in the presence of the panch witness i.e. PW 1 Jamwant and one Pathak; gave three currency notes of Rs.500/- each in the office of Anti-Corruption Branch when some powder was applied on the notes; treated notes were got touched with the hand of that person i.e. Mr.Pathak & hand of Pathak were dipped in a solution kept in a glass which turned pink. This witness, thereafter, reached the FSO office where he met the accused Varun Dave and he was asked by the accused Varun Dave whether he had brought the fees. PW 9 stated that he offered the three treated currency notes to the accused who accepted the same.

12. PW 10 Inspt.M.S. Sanga in his testimony deposed that while posted as Inspector in the Anti-Corruption Branch, the complainant Pawan Kumar visited the Anti-Corruption Branch when panch witness Jamwant was also there, and got his statement (Ex.PW 1/A) recorded. This witness stated that thereafter complainant produced three GC notes of Rs.500/- each number whereof was mentioned in the pre-raid report (Ex.PW 1/B); phenolphthalein powder was applied on the said notes; right hand of the PW 1 Jamwant, panch witness was got touched and dipped in the solution of sodium carbonate upon which the solution became pink; characteristics of both the powders were explained to the PW 9 Pawan Kumar, the complainant and PW 1 Jamwant, the panch witness; complainant was directed to remain close with the panch witness when transaction was to be made with the accused while the panch witness was also similarly directed so that he could hear the conversation between the complainant and the accused & money treated with phenolphthalein powder was handed over to

the complainant. This witness constituted a raiding party comprising himself, PW 1 Jamwant, the panch witness; PW 6 Inspt.M.A. Salam as well as five police officials. The team visited the office of Food & Civil Supply at 12.30 p.m. when PW 9 complainant and PW 1 panch witness were sent to contact the accused while all members of the raiding party took their position in different directions of the third floor of the office. It is stated by PW 10 that at about 1.45 p.m., he received the pre-raid signal from the panch witness by moving his hand over his head and by removing his spectacles from his face and putting the same on his eyes when this witness along with the other members of the team, rushed the spot and found the accused Varun Dave sitting in room no.310. This witness disclosed his identity and offered his search when panch witness apprised him that the accused Varun Dave with his right hand accepted Rs.1,500/- from the complainant Pawan Kumar which the accused, without counting, kept the same inside the front side pocket of his shirt. PW 10 Inspt.M.S. Sanga gave direction to PW 1 Jamwant to take out the money from the front side pocket of the shirt of the accused and after verifying the GC notes recovered from the accused, the numbers were similar being Ex.P-1 to P-3. Thereafter, numbers were compared with the pre-raid report (Ex.PW 1/B); shirt of the accused Varun Dave was got removed and pocket as well as right hand wash were taken separately in a separate solution which solution was transferred into two bottles each and marked as RHW-1 & RHW-II, SPW-I & SPW-II and that the same were labelled and sealed with the seal of MS. The shirt and washes were seized vide seizure memo Ex.PW 1/D while the Bottles were marked as Ex.P-4 to P-7 and shirt was marked as Ex.P-8. This witness further stated that signatures of the

panch witness i.e. PW 1 Jamwant were obtained on the pocket of shirt and all the bottles. This witness prepared post raid report which was marked as Ex.P/W 10/A; ruqqa Ex.PW 10/B on the basis of which FIR was recorded by the Duty Officer i.e. Amarjeet Singh.

13. PW 6 Inspt.Mohammad Abbas Salam in his statement stated that on 5th July, 2000 while posted as Inspector in AC Branch, he accompanied the raiding party which was constituted and headed by PW 10 Inspt.M.S. Sanga. His statement corroborated and testified the statement of PW 10 Inspt.M.S. Sanga with regard to conducting of raid. At the instance of the complainant i.e. PW 9 Sh.Pawan Kumar as well as PW 1 Jamwant, this witness prepared the site plan Ex.PW 6/A; recorded the statement of PW 1 as well as supplementary statement of the complainant; seized one file Ex.PW 1/E; arrested the accused Varun Dave vide personal search memo Ex.PW 1/G; seized documents vide seizure memo Ex.PW 5/A and the documents are PW 5/B-1 to 9; put the accused in lock up and deposited the case property with malkhana moharar of P.S. Civil Lines; sent the wash bottles RHW-1 and SPW-I and sample seal from PS Civil Lines to FSL and received FSL report vide Ex.PW 6/B.

14. PW 4 Sh.S.M. Sharma in his statement stated that on 27th July, 2000 while he was working as UDC in Food & Civil Supply office, he produced copy of attendance register (Copy Ex.PW 3/B-1) B-1 to B-2 for July, 2000 to the investigating officer and that the same was seized vide memo Ex.PW 3/A. This witness stated that as per the office procedure, if someone applied for a licence, the application of the applicant was to be diarised first and then put up to FSO who in turn marked the same to the concerned Inspector for

the purpose of verification of the godown etc. PW 4 further stated that on 5th July, 2000, one applicant filled up an application form which was diarised by him at Sl.No.4255 at page no.163 which was forwarded to FSO and that the same was marked by the FSO to the accused Varun Dave.

15. PW 3 Sh.Deepak Srivastav in his statement stated that on 27th July, 2000 while posted as LDC in the Administration Branch of the Food & Civil Supply office, he was doing the work entrusted to Head Clerk and Assistant and that on the date of raid, the accused Varun Dave was working as Inspector Grade-II posted and functioning in Grain Department.

16. PW 2 Ct.Mahender Singh in his statement stated that on 5th July, 2000 while posted as Assistant, MHC(M) in Police Station Civil Lines, PW 6 Inspt.Mohd.Abbus Salam deposited three GC notes, four bottles of washes duly sealed with the seal of MS and other personal search articles along with sample seal and that this witness made entry at Sl.No.263/2620 copy whereof was marked as Ex.PW2/A.

17. PW 1 Sh.Jamwant in his statement stated that on 5th July, 2000, he was deputed as panch witness in the Anti-Corruption Branch and that he was introduced with the complainant i.e. PW 9 Sh.Pawan Kumar by PW 10 Inspt.M.S. Sanga. It was stated by him that the statement of the complainant marked as Ex.PW 1/A was recorded in his presence. This witness stated that the complainant reported to the police that Varun Dave working as Inspector in Food & Civil Supply Department had demanded bribe of Rs.1,500/- for the purpose of issuing food grain licence. This witness corroborated and testified the statement of the complainant i.e. PW 9 Sh.Pawan Kumar as well as the statement of

the investigating officer i.e. PW 10 Inspt.M.S. Sanga with regard to the production of Rs.1,500/- consisting of three GC notes of Rs.500/- each; noting the numbers in pre-raid report (Ex.PW 1/B) which bore his signatures at point 'A'; applying phenolphthalein powder to the said notes; touching of his right hand which the notes and dipping the same in the solution which turned pink; returning of the said GC notes to PW 9 Pawan Kumar; instruction to hear the talks of the complainant and the accused and upon being satisfied regarding accepting of bribe by the accused as well as giving signal by removing spectacles from his face and showing the same with his hand. This witness along with the team, reached the Food & Supply Office, Vikas Bhawan when the complainant introduced him as his elder brother and thereafter, the complainant requested the accused to do his work whereupon the accused told him that fee would be required. This witness stated that the accused did not specify the amount of fee and told the complainant that he had already informed the amount. Thereafter, the complainant requested the accused to reduce the amount but the accused refused to do so. PW 1 stated that thereafter the complainant i.e. PW 9 Sh.Pawan Kumar handed over the tainted GC notes from the pocket of his shirt and gave the same to the accused on his specific demand who accepted the same in his right hand and kept the same in left pocket of his shirt. Thereafter, this witness gave the pre-arranged signal to the police. This witness in his statement stated that thereafter PW 10 Inspt.M.S. Sanga after introducing himself, apprehended the accused Varun Dave; recovered tainted notes Ex.P 1 to P 3 from left shirt pocket of accused; dipped the hands and the pocket of shirt of the accused in the solution which turned pink; transferred the solution into two

bottles each and marked the same as RHW-1 & RHW-II, SPW-I & SPW-II while the Bottles were marked as Ex.P-4 to P-7 and shirt was marked as Ex.P-8. The signatures of this witness were obtained on the pocket of shirt (Ex.P 8) at point 'A' and on all the bottles .

18. PW 8 Sh.Rakesh Bihari in his statement stated that on 25th April, 2001 while posted as Commissioner, Food & Civil Supply in Delhi Govt., he perused the documents with respect to Inspt.Varun Dave and after due application of mind and upon being satisfied, he accorded sanction to prosecute the accused vide Sanction Order marked as Ex.PW 6/E which bore his signatures at point 'A'.

19. PW 7 SI Subeer in his statement stated that on 24th July, 2000, while posted as SI in Anti-Corruption Branch, he received forwarding letter; copy of FIR & road certificate; exhibits of the case marked as RHW-I and SPW-I and sample seal of MS which he deposited in FSL Malviya Nagar on the same day.

20. As per the judgment in case of ***Ram Chander Vs. State (Govt. of NCT of Delhi) 2009 CrI.L.J. 4058 (Del)***, to succeed in a case of bribery, the prosecuting agencies are obligated to prove the previous demand of bribe, its acceptance and recovery of tainted money. It was observed that the demand can be proved by the testimony of the complainant as well from the complaint made by him. The presumption as to the demand of bribe can be drawn from the fact that the tainted money is recovered from the possession of the accused, though the presumption is rebuttable.

21. To prove the demand of bribe by the appellant from the complainant (PW 9) at the initial stage i.e. prior to laying of trap, complainant PW 9 had testified that on 25th January, 2000, he applied for food grain licence. He visited the office of Food &

Supply for applying and thereafter obtaining the food grain licence where on the direction of the Food & Supply Officer, he contacted the accused Inspt. Varun Dave. The complainant pursued the matter several times in the office of Food & Civil Supplies but failed to obtain the license. After 4th July, 2000, the complainant met the appellant two-three times when the appellant asked him whether he had brought the fees of Rs.1,500/-. The complainant thereafter approached the FSO who told him that he had already marked his application to the Inspt. Varun Dave. Thereafter, the complainant approached the Anti-Corruption Branch to lodge a complaint (Ex.PW 1/A) with regard to demand of Rs.1,500/- by the accused for the purpose of making the licence and in case of non-payment, cancellation of his application.

22. Perusal of statement Exh.PW 1/A shows that the complainant made a complaint to the Anti Corruption Branch of Delhi Police mentioning therein that he met the appellant a number of times for obtaining food grain licence but the appellant demanded bribe of Rs.1,500/- for making licence. The complainant in his complaint/statement stated that the accused Inspt. Varun Dave asked him that if he would bring Rs.1,500/- on 5th July, 2000, between 1.00 p.m. to 2.00 p.m. in the office, his work would be done otherwise his application for licence would be cancelled.

23. From the testimony of the complainant PW 1 and his written complaint Exh.PW 1/A, it has duly been established that the appellant demanded a bribe of Rs.1,500/- from the complainant for processing as well as granting him food grain licence and the complainant was asked to pay the same on 5th July, 2000. The word 'fee' as stated by the complainant during his testimony has to

be construed as bribe as for the purpose of applying licence, he was required to pay the requisite fee and fee is to be deposited with GPO/cashier in office. From a joint reading of the testimony of the complainant as well as his complaint, it was not a fee but bribe of Rs.1,500/- which was demanded by the applicant for the grant of licence as even otherwise, the Inspector in the Food & Supply is not entitled to receive any kind of fee. Thus, the prosecution has successfully established the demand of bribe by the appellant at the initial stage i.e. prior to laying of trap.

24. To prove the demand of bribe by the appellant at the time of laying trap, complainant PW 1 had testified that on 5th July, 2000, after completing proceeding in the office of ACB, he along with panch witness and members of raiding team reached the Food & Civil Supply Office, Vikas Bhawan and, thereafter, he along with panch witness went to room no.310, Third Floor, 'K' Block, Vikas Bhawan while the other raiding party members took their position. The appellant was found sitting inside that room. Thereafter, upon being accepting bribe money, the panch witness Jamwant (PW 1) gave the pre-determined signal to the investigating officer PW 10 who apprehended the accused.

25. As per the report PW 10/A prepared by the trap laying officer (PW 10), the complainant informed him that when he along with panch witness went to room number 310, appellant demanded Rs.1,500/-. Apparently, this report bears the signatures of the complainant (PW 9), panch witness (PW1) and trap laying officer (PW 10).

26. From the testimony of the complainant (PW 9), it has duly been established that during the laying of trap, appellant demanded the pre-fixed bribe of Rs.1,500/- from the complainant by saying

that he would do the work of the complainant if the required fee was given. The testimony of complainant has duly been corroborated by panch witness (PW 1) who had deposed that he heard the talks between the appellant and the complainant when trap was laid and that the complainant asked for the quantum of fee required upon which the accused replied that he had already told him the amount. The panch witness testified that the complainant asked the accused about reducing the amount but the accused declined to reduce the same. The report Exh.PW 10/A further corroborates the testimony of complainant that demand of bribe was also made by the appellant at the time of laying trap. Thus, it has duly been established that the appellant demanded bribe of Rs.1,500/- from the complainant at the time of laying trap.

27. To prove the acceptance and recovery of bribe by the appellant, the complainant PW 10 testified that when he along with panch witness PW 1 went to the office of the appellant, the appellant demanded the amount from him on which the complainant took out three GC notes of Rs.500/- each and extended the same to the appellant who accepted the same with his right hand and without counting them, kept the same in his front left side shirt pocket. Thereafter, the complainant gave pre-arranged signal on which the raiding party apprehended the appellant. Inspector M.S. Sanga recovered the bribe money from the shirt pocket of the accused. Numbers of recovered GC notes were tallied with their numbers mentioned in pre-raid report Exh.PW 1/B. The same were seized vide memo Exh.PW 1/D. Both the hands of the appellants were dipped in the solution of sodium carbonate which turned pink and washes were transferred to bottles. The hand washes were identified by the complainant as

RHW-1 & RHW-II, SPW-I & SPW-II. He also identified the recovered GC notes as Exh.PW P-1 to P-3 as the same which were recovered from the appellant. The raid report was prepared in his presence and he proved the same as Ex.P/W 10/A.

28. The panch witness Jamwant (PW 1) duly corroborated the testimony of PWs 9 & 10. PW 1 stated that he had seen and heard at the spot that after having talk with the appellant, the complainant took out money from his pocket and handed it over in the hand of the appellant. After giving pre-appointed signal, the raiding party came there for apprehending the appellant and three GC notes of Rs.500/- each were recovered from his shirt pocket. PW 10 Inspt.M.S. Sanga testified that after receiving pre-appointed signal, he along with the other members of raiding party, apprehended the appellant. The complainant pointed towards the appellant and said that the appellant had demanded bribe from him and he had paid Rs.1,500/- to him. The panch witness confirmed the statement of the complainant. In the search of the appellant, three currency notes of the denomination of Rs.500/- were recovered from the pocket of the appellant. Numbers of recovered currency notes were tallied with the numbers mentioned in pre-raid report. The currency notes exhibits P 1 to P 3 were seized vide memo PW 1/B. Hand washes of the appellant were taken in the solution of sodium carbonate which turned pink. The shirt of the accused Varun Dave was got removed and pocket as well as right hand wash were taken separately in a separate solution which solution was transferred into two bottles each and marked as RHW-1 & RHW-II, SPW-I & SPW-II and that the same were labelled and sealed with the seal of MS. The shirt and washes were seized vide seizure memo Ex.PW 1/D while the Bottles were

marked as Ex.P-4 to P-7 and shirt was marked as Ex.P-8. The post-raid proceedings were recorded vide Ex.P/W 10/A.

29. The testimony of complainant regarding acceptance and recovery of bribe by the appellant has also been corroborated by PW 6 SI Inspector Mohammad Abbas Salam who was also part of the raiding team and conducted proceedings after registration of case. He had testified about the proceedings conducted in Anti-Corruption Branch office, at the spot and the recovery of bribe money from the appellant.

30. The CFSL report Exh.PW 6/B further corroborates the testimony of the prosecution witnesses. The CFSL Report Exh.PW 6/B shows that hand washes marked RHW-II, RHW-I and shirt pocket wash SPW-I and SPW-II were examined in the laboratory and as per the opinion of the scientific expert, the same gave positive test for phenolphthalein powder and sodium carbonate. Thus, the CFSL report Exh.PW 6/B duly establishes that the appellant accepted the bribe from the complainant and its recovery was effected from his hands.

31. The discussion made above shows that the testimony made by the complainant, punch witness and trap laying officer including the raiding party members coupled with CFSL report Exh.PW 6/B, is trustworthy.

32. It is clear from the testimony of PWs 1 & 9 which has duly been corroborated by PW 10 that the bribe of Rs.1,500/- was accepted by the appellant from his hands and its recovery was duly effected from his person. The acceptance and recovery of bribe of Rs.1,500/- by the appellant in the form of tainted GC notes has also been established from FSL report Ex.PW 6/B. The contention of the appellant that Rs.1500/- was taken in lieu of licence fee, holds

no merit inasmuch as he was not entitled to receive any particular fee including licence fee and that the same was the work of General Post Office and cashier in office.

33. Section 20 of the Prevention of Corruption Act provides for raising of a presumption in trial of offences punishable under Section 7 or 13 of the P.C. Act, that an accused has accepted or obtained any gratification other than legal remuneration. The only condition for drawing such a legal presumption under Section 20 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. Though the presumption under Section 20 of the PC Act is rebuttable, in the present case the appellant has failed to rebut the same. In the present case, the prosecution has proved its case beyond reasonable doubt that the appellant demanded and accepted bribe from the complainant and its recovery was duly effected from him. Therefore, there is every reason to raise a presumption under Section 20 in the instant case.

34. Thus, it is clear from the discussion made above in detail that the appellant has failed to make out any ground in support of his appeal. It has duly been established that the appellant demanded bribe of Rs.1,500/- from the complainant and that during laying of trap, the appellant accepted illegal gratification other than legal remuneration amounting to Rs.1,500/- from the complainant and its recovery was duly proved from the person of the appellant. The offence of the appellant, therefore, clearly falls within the ambit of Sections 7 & 13(1)(d) of the PC Act, 1988. Thus, there is no ground to interfere with the judgment of conviction dated 15th

November, 2003 and the order on sentence dated 19th November, 2003 passed by the Trial Court which are, hereby, upheld.

The appeal is hereby dismissed.

The appellant is on bail. His personal bond and surety bonds stand cancelled. He is directed to surrender before the Trial Court concerned within fifteen days from the date of judgment, to serve the remainder of sentence.

The appeal is disposed of accordingly.

(P.S.TEJI)
JUDGE

MARCH 31, 2017
aa