

R.P.S. YADAV

A

v.

CENTRAL BUREAU OF INVESTIGATION

(Criminal Appeal No.9 of 2012)

JANUARY 28, 2015

B

**[FAKKIR MOHAMED IBRAHAIM KALIFULLA AND  
ABHAY MANOHAR SAPRE, JJ.]**

*Prevention of Corruption Act, 1988 – ss. 7, 13(2) rw s. 13(1)(d) – Public servant taking gratification for an official act – Appellant-MCD employee allegedly took bribe from the complainant for issuance of licence – Conviction and sentence of the appellant u/ss. 7, 13(2) rw s.13(1)(d) by the courts below, on the basis of the evidence of the complainant and the trap witnesses – Sustainability of – Held: Not sustainable – No legally acceptable evidence either from the complainant or from the other so called independent witness or the shadow witness in order to show that the mandatory requirement for conviction u/ss. 7, 13(2) read with 13(1)(d) namely, the demand, acceptance and recovery was chronologically proved as against the appellant – Thus, the order of conviction and sentence by the courts below set aside.*

C

D

E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 9 of 2012.

F

From the judgment and Order dated 08.04.2011 of the High Court of Delhi at New Delhi in criminal Appeal No. 107 of 2002.

G

Brajesh Kumar Singh, Anil Kumar Tandale for the Appellant.

Vibha Dutta Makhija, Rashmi Malhotra, Disha Vaish, Arvind Kumar Sharma for the Respondent.

H

A The following Order of the Court was delivered

### ORDER

B 1. This appeal is directed against the conviction of the  
C appellant under Sections 7 and 13(2) read with Section 13(1)(d)  
of the Prevention of Corruption Act, 1988. The appellant was  
sentenced to undergo simple imprisonment for a period of two  
years for the offence under Section 7 along with a fine of Rs.  
3000/- with a default clause and for a period of two and a half  
years with a fine of Rs. 1000/- with the usual default clause for  
the offence under Section 13(2) read with 13(1)(d).

D 2. The case of the prosecution as narrated before the  
courts below was that P.W. 3 Hamid Khan, the complainant who  
was running a tailoring shop at F-237, New Seemapuri, Delhi  
applied for a licence in the year 1994 to the Municipal  
Corporation of Delhi [for short 'the M.C.D.'], Health Department  
located in Shahdara Zone, Delhi. In April, 1995, he received a  
letter from M.C.D. calling upon him to furnish some documents  
for running the tailoring shop. After furnishing those documents  
when no further communication was forthcoming from the  
E M.C.D., he approached the appellant who was an employee  
in the M.C.D., who was the concerned person dealing with his  
application.

F 3. According to P.W. 3, when he met the appellant on 5th  
May, 1995 at 3:00p.m. in the office of the appellant, the  
appellant informed him that to carry out the issuance of licence  
to him, P.W. 3 will have to pay a fee and that he should pay a  
sum of Rs. 1,500/- (Rupees One thousand five hundred) by way  
of bribe amount. As P.W.3 – the complainant was not willing  
to pay the bribe amount he stated to have preferred a complaint  
G with the respondent-Central Bureau of Investigation [for short  
'the C.B.I.'], who in turn organised a trap and along with P.W. 3  
– the complainant and a shadow witness P.W. 6 was also  
arranged. The formalities for carrying out the trap were all set  
on 8th May, 1995. P.W. 3 – complainant along with P.W. 6, the  
H shadow witness went to the office of the appellant on 9th May,

1995 and met the appellant and in the course of the conversation when P.W.3 – complainant inquired as to whether his job for issuance of licence was carried out, the appellant stated to have answered in the affirmative and in turn wanted to know whether his demand of payment of bribe was ready. A

4. When P.W. 3 - the complainant informed him that he has brought what was demanded by the appellant, the appellant directed P.W. 3 the complainant to go along with A2, one Janakraj to whom P.W. 3 was directed to handover the money, i.e., the demanded bribe money. Thereafter A2 Janakraj is stated to have taken P.W. 3 along with P.W. 6 to a nearby park outside the office of M.C.D. where the money was stated to have been handed over to A2 and thereafter as per the signal waived by P.W. 6, the C.B.I. party reached the spot and A2 was confronted from whom the money paid by P.W. 3 was recovered and the hand wash was also taken. When A2 pleaded with the C.B.I. official that he never demanded and that what was paid to him by P.W. 3 was at the instance of the appellant and A2 was directed by the C.B.I. officials to go to the chamber of the appellant and carry out directions of the appellant without showing any other gesture. A2, as directed, stated to have gone into the chamber of the appellant along with P.Ws. 3, 6 and others. It was based on the above narration of the prosecution, the charge was laid against the appellant along with A2 – Janakraj. B C D E

5. The key witnesses examined in support of the charge of the demand, acceptance and recovery as against the accused were P.Ws. 3 and 6 namely, the complainant and the shadow witness. The trial court after considering the entire evidence ultimately found that A2 – Janakraj was not guilty of the charge of of the charges made against him and acquitted him. The appellant was convicted for the offence referred to above and was imposed with the sentence as mentioned above. The High Court having confirmed the conviction and sentence imposed on the appellant, the appellant is before us. F G

6. We have heard Mr. Brajesh Kumar Singh for the H

- A appellant and Ms. Vibha Datta Makhija, learned senior counsel for the C.B.I. We have also made our earnest endeavour to ascertain whether for establishing the charge under Section 7 as well as Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, the fundamental requirement of demand, acceptance and recovery of the bribe money was convincingly proved against the appellant.

7. In that respect, we found that evidence of P.Ws. 3 and 6 were more relevant as they were the complainant and the trap witnesses. When we perused the evidence of P.W. 3 who turned hostile and was cross-examined at length by the respondent up to the point of recovery from A2 based on the alleged direction of the appellant is concerned, we do not find any conflict. In other words, the narration as made by P.W. 3 as well as P.W. 6 who were the key witnesses speak about the factum of demand and acceptance of bribe, were to some extent consistent in narrating the event up to the point of the demand of Rs. 1500/- (Rupees One thousand five hundred) as tainted notes to accused Janakraj at the park which was located outside the office of M.C.D.

8. Thereafter, when we wanted to ascertain as to the case of the prosecution that the said accused Janakraj carried the direction of the appellant by handing over the tainted money to the appellant and as to whether such tainted currency notes were recovered from the appellant, we find that there was no acceptable legal evidence to that effect. We can profitably refer to the evidence of P.W. 3 who stated initially that the recovery of tainted currency notes after Janakraj was taken to the chamber of the appellant was from the right side pant pocket of accused Janakraj. Immediately after making the said statement, P.W. 3 took diametrically opposite stand and said that it was not recovered from accused Janakraj but was recovered from the appellant. Immediately thereafter he went on to state that he did not remember whether in his 161 Statement, stated that the money was recovered from the pocket of the appellant and not from the pocket of Janakraj. In fact, P.W. 3 was confronted with his 161 statement where it

was not so recorded. He also confirmed in the cross examination that hand wash of Janakraj was taken by allowing him to dip his left hand fingers in a freshly prepared colourless solution of sodium carbonate which turned pink.

9. Going by the above version of P.W. 3, it was clear that both on the first occasion when accused Janakraj was confronted by the officials of C.B.I. the process of dipping his fingers in the solution was carried out and the said process was repeated afresh after he was taken to the chambers of the appellant. Secondly, nowhere in the evidence of P.W. 3 either in chief or in the cross we could deduce any statement to the effect that at any point of time the hand wash of the appellant was taken in order to show that after the initial recovery from accused Janakraj the process was continued to ensure that the demand of the appellant and acceptance of the bribe money through Janakraj was completed by accepting the money from accused Janakraj and ultimately recovery was also effected from the appellant by the usual practice of hand wash of the appellant.

10. In fact, we do not find any such legally acceptable evidence either from P.W. 3 or from the other so called independent witness P.W. 6 or the shadow witness in order to show that the mandatory requirement for conviction under Sections 7 and 13(2) read with 13(1)(d) namely, the demand, acceptance and recovery was chronologically proved as against the appellant. In the light of our above conclusion based on the analysis of the evidence led before the Court, we are constrained to hold that the conviction imposed on the appellant by the trial court as well as confirmation of the same by the High Court cannot be sustained.

11. The appeal succeeds and the impugned judgment is set aside. The appellant is stated to be on bail. His bail bonds shall stand discharged and his sentence is set aside.