

**Satish Kumar Bhalla Vs. State**

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**Court :** Delhi

**Decided On :** Jan-10-2014

**Judge :** Indermeet Kaur

**Appellant :** Satish Kumar Bhalla

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on:- 03.01.2014. Judgment delivered on 10.01.2014. CRL.A. 99/2007 SATISH KUMAR BHALLA Through versus ..... Appellant Mr. Kuldeep Singh, Adv. STATE Through + ..... Respondent Mr. Navin Kumar Jha, APP CRL.A. 748/2011 KAILASH NATH & ANR Through ..... Appellants Mr. Hari Nand Vashishtha and Mohd. Faisal, Adv. versus STATE Through ..... Respondent Mr. Varun Goswami, APP CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 There are three appellants before this Court. Appellant Satish Kumar Bhalla is aggrieved by the impugned judgment and order on sentence dated 03.02.2007 and 05.02.2007 respectively wherein he had been convicted for charges under Sections 7 read with 13 (2) and 13 (1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the said Act) and had been sentenced to undergo RI for a period of 3- years and to pay a fine of Rs. 15,000/- and in default of payment of fine to undergo SI for 6 months for the offence punishable under Section 7 of the said Act. For the second offence, the convict had been sentenced to undergo RI

for a period of 4 years and to pay a fine of Rs.20,000/- and in default of payment of fine to undergo SI for 9 months. On the same day on the application of Satish Kumar Bhalla filed under Section 319 of the Cr.PC, an order had been passed for summoning of accused Kailash Nath and Ramesh. This was in view of the evidence which had emanated in the version of the complainant (PW-6). Supplementary challan against Kailash Nath and Ramesh had been filed. After the completion of trial, the aforementioned accused were also convicted vide impugned judgment and order on sentence dated 28.02.2011 and 26.03.2011 respectively vide which they had been convicted under Sections 7 and 13 (2) read with Section 13 (1)(d) of the said Act. Each of them had been sentenced to undergo RI for a period of 3 years and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo SI for 3 months for the offence under Sections 7 and 13 (2) read with Section 13 (1)(d) of the said Act. For the offence under Section 120-B of the IPC, they had been sentenced to undergo RI for a period of one year and to pay a fine of Rs.500/- and in default of payment of fine to undergo SI for 1 month. 2 All the aforementioned appellants are aggrieved by the aforementioned judgments and orders on sentence. 3 Version of the prosecution has emanated from the complaint of Rajender Kuumar Tiwari (PW-6). As per his complaint (Ex.PW-6/A), a case of misuse of electricity had been lodged against his father-in-law. The complainant was residing along with his father-in-law at house No 3700/C/2, Gali No.7, Shanti Mohalla, Raghuvar Pura, Delhi. The complainant was looking after the affairs of his father-in-law as he was an aged man. He had his electricity bill decreased from Rs. 1 lac to Rs.30,000/- and had undertaken to pay three installments to the DESU. After the payment of first two installments, the third and last installment was to be paid by 21.01.1995. Further version in the complaint was that after the inspection of the record, the complainant found that an excess amount of Rs.18,000/- has been paid to the DESU; he contacted the dealing officers of the Delhi Vidyut Board (DVB) namely Satish Kumar Bhatta, Assistant Accountant, Kailash Nath, Head Clerk and Ramesh, Clerk; he was told that his work would be done but on a payment of Rs.2,000/- to each of the aforementioned officials. On negotiations, it was agreed that the complainant would pay a sum of Rs.3,500/- to Satish Kumar Bhalla at his shop at Kanti Nagar. Time of payment was agreed to be 07:00 PM on 15.01.1995; thereafter the electricity bill of his father-in-law would

be rectified. Since the complainant was unwilling to pay the bribe amount, he had filed this complaint. 4 Pre-trap proceedings were organized. In the raid conducted in the shop of the appellant Satish Kumar Bhalla, the appellant was found to be in possession of the tainted money. The testimony of the complainant Rajender Tiwari (PW-1) was corroborated by the panch witness R.S. Gautam (PW-9). The defence projected by the accused was rejected. 5 On behalf of the appellant Satish Kumar Bhalla, arguments had been addressed in detail by Mr. Kuldeep Singh, Advocate. On behalf of other two co-accused namely Kailash Nath and Ramesh, arguments had been addressed by Mr. Hari Nand Vashishta, Advocate. 6 Learned counsel for accused Satish Kumar Bhalla has pointed out that the sanction order (Ex.PW-1/A) suffers from a vice, being mechanical. There has been no application of mind. Attention has been drawn to the testimony of Dev Trivedi (PW-1), the sanctioning authority wherein in his cross-examination it has been admitted that the draft sanction order available in his file is the sanction order Ex.PW-1/A. It is pointed out that this admission by PW-1 itself shows that there has been no application of mind by the sanctioning authority while granting the sanction. On this ground alone, the impugned judgment is liable to be set aside. To support this submission reliance has been placed upon a judgment of this Court reported as 2009 (2) JCC1210 Om Prakash Vs. State & Others; it is pointed out that in similar circumstances where the draft order had been verbatim signed by the sanctioning authority, a Bench of this Court had held that the sanction is invalid. Second submission of the learned counsel for the appellant being that appellant Satish Kumar Bhalla was an Assistant Accountant in the DVB and he had no authority to reduce electricity bills; he has been falsely roped in; submission being that he has taken this stand even in his statement under Section 313 of the Cr.PC. The third argument of the learned counsel for the appellant is that the provisions of Section 319 of the Cr.PC have been violated; attention has been drawn to the said statutory provisions. It is pointed out that the Court has suo moto powers to summon such persons where the evidence in the course of the trial emanates to the effect that there is involvement of other persons as well and in such an eventuality, there should be de novo trial. It is pointed out that prejudice has been caused to the appellant as in this case trial qua the other two co-accused namely Kailash Nath and Ramesh has been separated and the

conspiracy angle has not been permitted to be answered by the present appellant. To support this submission, reliance has been placed upon AIR 2007 SC (Supp) 981 Y. Saraba Reddy Vs. Puthur Rami Reddy and Others as also 2002 CrL. L. J.

2806 Shashikant Singh Vs. Tarkeshwar Singh and another; submission being that there should have been a joint trial of the present appellant along with other co-accused in the absence of which he has suffered a grave injustice. On merits, it has been pointed out that the testimony of the complainant (PW-6) is irreconcilable with the version of the panch witness R.S. Gautam (PW-9); benefit of doubt must accrue to the appellant on this score as well. It has lastly been pointed out that the report of the CFSL (Ex.PW-12/C) which has tested positive for phenolphthalein powder cannot be read against the accused as this report has been proved only in the version of the IO Inspector Ranjit Ekka (PW-12); the senior scientific officer, who had prepared this report, has not been summoned into the witness box. On all counts, the appellant is entitled to a benefit of doubt and a consequent acquittal. 7 On behalf of the appellants Kailash Nath and Ramesh submissions have also been addressed in detail by counsel Mr. Hari Nand Vashisht. It is pointed out that both the appellants have been falsely implicated; they had no role to play in the alleged conspiracy. Attention has been drawn to the testimony of PW-2 who was posted as an Assistant Finance Officer in DESU; in his cross-examination he has admitted that the billing section was in two rooms and the meter reading section was in a separate room; after the bill is raised, it is the duty of the MSR to recover the amount of the bill; if the consumer wants to deposit the bill in installments, he has to approach the MSR for making the installments. Attention has also been drawn to the version of PW-3 who was working as a clerk in DESU; he has deposed that as per the procedure, it was for Satish Kumar Bhalla to have forwarded the file to Section In-Charge of the MSR for revision in the bill; accused were having no authority to pass the cases of bill revision. Submission being that the complaint of the complainant is founded upon a revision in his bill which was not the job of the present accused; the complainant being a tout has falsely implicated the present accused. Second submission of the learned counsel for the appellants being that the complaint (Ex.PW6/A) is admittedly not in the handwriting of Rajender Kumar Tiwari. To substantiate this submission, attention has been drawn to the version of Rajinder Singh Manku (PW-4) wherein he had stated

that the complaint (Ex.PW-6/A) was the statement which had been given by the complainant to PW-4 and which had been reduced into writing by him. Submission being that the entire complaint has been crafted and drafted only at the behest of raiding team. Attention has also been drawn to the statement of ACR Ramesh Kaushik (PW-5) who had stated that he had recorded the supplementary statement of the complainant on 22.01.1999. It is pointed out that no such statement is on record and even otherwise, there was no purpose whatsoever for recording the statement of the complainant four years from the date of the alleged offence. The question of hatching of a conspiracy does not arise. On mere oral statement of PW-6 which was recorded as way back as 1995 and the order of the Court dated 03.02.2007 which had been passed on the application of Satish Kumar Bhalla (under Section 319 of the Cr.PC), the investigation was set into motion qua the present appellants. Submission being that the convicting Court in its impugned judgment dated 28.02.2011 has merely followed the dictate of the order of the earlier Court dated 03.02.2007 and without going into the details of a criminal conspiracy, has convicted the accused persons. On all counts, the appellants are entitled to a benefit of doubt and a consequent acquittal. 8 Learned public prosecutors have countered these submissions. It is pointed out that the sanction order qua Satish Kumar Bhalla suffers from no infirmity and to support this submission reliance has been placed upon (2010) 8 SCC655 State of Madhya Pradesh Vs. Harishankar Bhagwan Prasad Tripathi. It is pointed out that while granting sanction, the officer is not required to indicate that he has personally scrutinized the file; a narration of the events granting sanction by itself would indicate that it is a valid sanction. It is pointed out that Kailash Nath had since retired and no sanction was required qua him. Qua the role of Ramesh since he was an employee of DESU which had been taken over by the BSES in 2002, there was no requirement of obtaining sanction qua him as well. To support this submission, reliance has been placed upon 1999 VI AD (SC) 363 State of Kerala Vs. Padmanabhan Nair as also (1998) 6 SCC411 Kalicharan Mahapatra Vs. State of Orissa. Qua the argument on Section 319 of the Cr.PC, it is pointed out that the Apex Court in JT2013(8) SC79 Babubhai Bhimabhai & Anr. Vs. State of Gujarat has held that every accused has a right of speedy trial and the phrase as appeared in Section 319 could be tried together is only directory. A de novo trial is

mandatory only qua those persons who have been summoned afresh for which there must be a new trial and the witnesses also have to be summoned afresh. It would not apply in the instant case where the trial qua the role of Satish Kumar Bhalla had already concluded. On merits it is pointed out that the impugned judgments dated 03.02.2007 and 28.02.2011 in no manner suffer from any infirmity. The complainant has detailed the role of all the three appellants right from the inception and this finds mention in his initial complaint (Ex.PW-6/A). This has been reiterated in his deposition on oath in Court and has also been supported by S.B. Gautam who was the panch witness. The chemical analysis test was also in favour of the prosecution. On no counts do the impugned judgments suffer from any infirmity. 9 I have heard the arguments of the learned counsels for the parties and appreciated their submissions. Record has also been perused. 10 Section 19 of the said Act deals with the mandatory requirement of a previous sanction, which is necessary for prosecution under the provisions of the said Act. It is coined in a negative language. It is a necessary pre-requirement for prosecution of a public servant. It also does not have to be an empty formality. Grant of sanction is a sacrosanct act and is intended to provide a safeguard to a public servant against frivolous and vexatious litigation. Although it is an administrative function but the sanctioning authority is required to prima facie reach a satisfaction that the relevant facts constitute the offence. Flimsy technicalities cannot be allowed to become tools in the hands of the accused. 11 The Supreme Court in (2013) 8 SCC119 State of Maharashtra Vs. Mahesh G. Jain on this aspect had culled out the following principles:

14.1 It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out. 14.2 The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution. 14.3 The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it. 14.4 Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence. 14.5 The adequacy of

material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order. 14.6 If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction. 14.7 The order of sanction is a prerequisite as it is intended to provide a safeguard to public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity.

12 It is on this touchstone that the sanction order Ex.PW-1/A has to be tested. Perusal of Ex.PW-1/A shows that the first paragraph evidences the narration of facts and after the narration of the facts, the sanction order recites that the acts of Satish Kumar Bhalla constitute an offence punishable under Sections 7 & 13 of the said Act. The third paragraph recites that it is after a careful examination of the material placed before the sanctioning authority in regard to the acts and allegations and circumstances of the case that the sanction is accorded to prosecute Satish Kumar Bhalla who was then working as an Assistant Accountant with the DVB. 13 This sanction order is not only valid but shows a clear application of mind. 14 The judgments relied upon by the learned counsel for the appellant (Satish Kumar Bhalla) are distinct on their own facts. In Om Praksh (Supra) there was nothing in the sanction order indicating that the material had been perused by the sanctioning authority before according the sanction. This is not so in the instant case. Ex.PW-1/A reflects application of mind by the sanctioning authority. Merely because the draft order had been placed in the file of the sanctioning authority, which along with material placed on record had been perused by the sanctioning authority, it cannot be said that the sanction suffers from any vice. Ex.PW-1/A was a valid sanction. 15 Qua the role of Kailash Nath, it is an admitted position that he had retired from service not only at the time when the cognizance of the offence had been taken against him but even at the time when the supplementary charge-sheet had been filed against him. He had retired from service on 30.06.2001. Supplementary charge-sheet had been filed against accused Kailash Nath in 2007. There was no requirement of obtaining any sanction against a retired public servant. 16 The Supreme Court in case of P. Nair (supra) while quoting with approval the observations in the case of Kalicharan

Mahapatra (supra) had inter-alia noted as under:

A public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 19 of the Act if he continues to be a public servant when the Court takes cognizance of the offence. But if he ceases to be a public servant by that time, the court can take cognizance of the offence without any such sanction.

17 It is thus clear that for a retired public servant, sanction was not required. 18 The third appellant Ramesh who was employed with the DVB, in 2002 became an employee of BSES as BSES had been taken over by the DVB. There is no quarrel on this proposition. There is also no quarrel that majority shareholding of BSES was privately owned. In these circumstances, sanction was not a requirement for prosecution of appellant Ramesh as well. 19 Section 319 of the Cr.PC reads as under:- Section 319 Cr.P.C..Power to proceed against other persons appearing to be guilty of offence.(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. (2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid. (3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed. (a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard; (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. 20 Section 319 (4) is clear and categorical. It clearly postulates that where the Court proceeds against any person under the first sub-clause, the proceedings against such a person shall be commenced afresh. The language of Section 319 by itself suggests that a de novo trial is required only against those accused persons who have been summoned in the case of the trial. Where proceedings against one co-accused had already culminated as was so in the instant case, the right of a

speedy trial also having been recognized as a fundamental right the Supreme Court has time and again reiterated that in such a situation there would be no impediment for prosecution to challan the other accused who may be tried separately. 21 The Supreme Court in Babubhai Bhimabhai Bokhiria (supra) had examined this position after referring to the case of Hardeep Singh Vs. State of Punjab JT2009(12) SC7 a judgment relied upon by the learned counsel for the appellant Satish Kumar Bhalla. In the case of Babubhai Bhimabhai Bokhiria (supra), a special leave petition had been filed by the co-accused whose trial already stood concluded; the Apex Court had noted that the words could be tried together appearing in Section 319 are not mandatory but only directory. 22 Relying upon the judgment of Shashikant Singh (supra), the Apex Court in the context of this statutory provision had inter alia noted as under:

The safeguard provided in respect of such person is that, the proceedings right from the beginning have mandatorily to be commenced afresh and the witnesses reheard. In short, there has to be a de novo trial against him. The provision of de novo trial is mandatory. It vitally affects the rights of a person so brought before the court. It would not be sufficient to only tender the witnesses for the cross-examination of such a person. They have to be examined afresh. Fresh examination-in-chief and not only their presentation for the purpose of the crossexamination of the newly added accused is the mandate of Section 319(4). The words "could be tried together with the accused" in Section 319(1), appear to be only directory, "Could be" cannot under these circumstances be held to be "must be". The provision cannot be interpreted to mean that since the trial in respect of a person who was before the court has concluded with the result that the newly added person cannot be tried together with the accused who was before the court when order under Section 319(1) was passed, the order would become ineffective and inoperative, nullifying the opinion earlier formed by the court on the basis of the evidence before it that the newly added person appears to have committed the offence resulting in an order for his being brought before the court.

23 The law is thus no longer res integra on this point. The mere fact that the trial of some of the accused has concluded would not prevent the prosecution of other co-accused for the offences for which they have been summoned. The Court had

arrived at this conclusion noting that all accused persons have an inbuilt right of speedy trial which is not only the right recognized of the accused but is also in public interest, flowing from Article 21 of the Constitution. 24 Record shows that in the instant case, during the course of the trial of Satish Kumar Bhalla, when the trial was almost at the fag end i.e. after the statement of the accused had been recorded under Section 313 of the Cr.PC, on 06.01.2007 an application had been filed by the appellant Satish Kumar Bhalla under Section 319 of the Cr.PC. The averments made in this application have been perused. They were largely to the effect that not only in the initial complaint (Ex.PW-6/A) but also in the version of PW-6, the role of Kailash Nath and Ramesh had surfaced and they should also be summoned. This application was disposed of on 03.02.2007 i.e. on the same date when the impugned judgment convicting Satish Kumar Bhalla had been passed. The Court had separately noted that a case for summoning of Kailash Nath and Ramesh was made out. 25 Learned counsel for accused Kailash Nath and Ramesh has further pointed out that at this stage of summoning, they were not heard; adverse order of summoning has been passed in their absence. The law on this point is also well settled. 26 At the stage of taking cognizance, the accused has no role; the Court takes cognizance of the offence and not of the accused. The Supreme Court in AIR 1983 SC67Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi while dealing with the summoning order which had been passed under Section 319 of the Cr.PC had made the following observations:

"..... In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken."

In view of the above decisions it is clear that the Sessions Judge is fully empowered to implead the petitioners as accused persons and was right in doing so since it came to his knowledge in the course of trial about the participation of

the petitioners in the offence.

. 27 There was thus no requirement of the appellants Kailash Nath and Ramesh to be heard at the summoning stage. Even otherwise, the order dated 03.02.2007 has since become final. It was not challenged. 28 On merits, the statement of the complainant Rajender Kumar Tiwari on oath has fully corroborated his complaint Ex.PW-6/A. Ex.PW-6/A dated 15.11.1995 evidences that the complainant was asked by Kailash Nath and Ramesh to meet Satish Kumar Bhalla in order to get his bill revised. The version of the complainant was that he was looking after the bills of his father-in-law and an excess amount of Rs.18,000/- had been paid by him; the last installment of Rs.11,028/had to be deposited by him; this revised bill could only be effected if an illegal gratification of Rs.3,500/- was paid to the accused. This version in Ex.PW-6/A has been corroborated by Rajender Kumar Tiwari in his deposition on oath in Court. Rajender Kumar Tiwari has come into the witness box on two occasions. The first instance relates to the proceedings qua Satish Kumar Bhalla which was in the year 2006. He was summoned for the second time after the supplementary charge-sheet had been filed against Kailash Nath and Ramesh. He did not fault even in his cross-examination. In fact neither of the counsels for the appellants have been able to point out any contrary stand adopted by him in his first examination or in his later examination; neither in his examination-in-chief and nor in his cross-examination. 29 Rajender Kumar Tiwari was categorical in his version. He had deposed that earlier there was a demand of Rs.2,000/- by each of the accused; it had been negotiated down to Rs.3,500/- which amount was to be paid to Satish Kumar Bhalla at his shop. Since he was unwilling to pay the amount, he had filed the complaint pursuant to which a raiding party was organized. Panch witness was Mr. S.B. Gautam. Raiding party along with Inspector Rajinder Singh Manku had reached the shop of Satish Kumar Bhalla at about 07:00 pm on 15.11.1995. The complainant was accompanied by R.S. Gautam. The notes were handed over to the appellant. They were three notes in the denomination of Rs.500/- each and 20 GC notes of Rs.100/- each. On the signal given by R.S. Gautam, the raiding party reached the shop where the transaction had taken place; the hand-washes of the appellant were taken; when dipped into a solution they turned pink; this was for the reason that phenolphthalein powder has been coated upon them in the pre-raid proceedings.

Separate hand-washes of his right and left hands were taken and sealed into bottle. The CFSL after a chemical analysis tested these hand-washes positive for phenolphthalein indicating that this was in fact the tainted money which was found in the hands of the appellant Satish Kumar Bhalla. 30 This version of R.K. Tiwari could not be discredited in his cross-examination. 31 The version of R.K. Tiwari was fully supported by R.S. Gautam who had also appeared in the witness box on two occasions i.e. during the proceedings of the challan against Satish Kumar Bhalla and thereafter when the supplementary charge-sheet had been filed against Kailash Nath and Ramesh. He also successfully withstood the test of cross-examination. 32 Another member of the raiding party was Rajinder Singh Manku. His credibility was also untarnished in his cross-examination. 33 At the cost of repetition and as noted supra in fact neither of the counsels for the appellants have been able to point out any discrepancy in the aforementioned consistent versions of Rajender Kumar Tiwari, R.S. Gautam and Rajinder Singh Manku. 34 The submission of the learned counsel for the appellants Satish Kumar Bhalla that he has been falsely implicated and in fact had no role in the revision of the bill of the complainant is an argument bereft of force. 35 The Supreme Court has time and again noted that the misconduct by a public servant need not necessarily be in connection with his official duty. In 1962 (1) CrL.J.203 Dhaneshwar Narain Saxena Vs. The Delhi Administration had inter-alia noted as under:

It is not necessary that the public servant in question, while misconducting himself should have done so in the discharge of his duty. It would be anomalous to say that a public servant has misconducted himself in the discharge of his duty. "Duty" and "misconduct" go ill together. If a person has misconducted himself as a public servant it would not ordinarily be in the discharge of his duty, but the reverse of it. That 'misconduct', which has been made criminal by section 5 of the Act, does not contain the element of discharge of his duty, by public servant, is also made clear by reference to the provisions of clause (c) of section 5(1). It is well settled that if a public servant dishonestly or fraudulently misappropriates property entrusted to him, he cannot be said to have been doing so in the discharge of his official duty (vide the case of *Hori Ram Singh v. The Crown* [1939]. F.C.R.

159. An application for special leave to appeal from that decision was refused by the Privy Council in *Hori Ram Singh v. The King-Emperor* MANU/FE/0011/1940 : [1940]. F.C.R.

15. This Court therefore, misread the section when it observed that the offence consists in criminal misconduct in the discharge of official duty. The error lies in importing the description of the offence into the definition portion of it. It is not necessary to constitute the offence under clause (d) of the section that the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage. It is equally wrong to say that if a public servant were to take money from a third person, by corrupt or illegal means or otherwise abusing his official position, in order to corrupt some other public servant, without there being any question of his misconducting himself in the discharge of his own duty, he has not committed an offence under section 5(1) (d). It is also erroneous to hold that the essence of an offence under section 5(2), read with section 5(1) (d), is that the public servant should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage.

36 It is no longer *res integra* that a public servant demanding bribe is or is not in a position to help the bribe giver; he may in fact have misled the victim to believe that he could fully well do the work. In fact the language of Section 13 (1)(d) and the definition of mis-conduct as contained therein clearly stipulates that a criminal misconduct is made out if a public servant obtains either for himself or for any other person any valuable thing or pecuniary advantage. 37 Thus this argument of the learned counsel for the appellant Satish Kumar Bhalla is devoid of force; it is rejected. 38 The CFSL report (Ex.PW-12/C) was proved in the version of the Investigating Officer; it is admissible under Section 293 of the Cr.PC; no request was also made for summoning of the author of the report; the Investigating Officer was also not cross-examined on Ex.PW-12/C; Ex.PW-12/C is another vital piece of evidence. 39 Learned counsel for the appellant Kailash Nath and Ramesh has submitted that it has come in the version of PW-2 and PW-3 that they were in the dealing section and they had no role to play in the revision of the bill and it was only the MSR (Meter Reading Superintendent) who could deal with the revision of

the bills and PW-6 being a tout has falsely implicated Kailash Nath and Ramesh for grudge which he was nursing against them. This submission of the learned counsel for the appellants is not borne out from the record. No cross-examination of any of the witnesses of the prosecution has been effected on this score. Even in their statements under Section 313 of the Cr.PC, it is not the version of Kailash Nath or Ramesh that the complainant being a tout had falsely implicated them. It was as early as on 15.11.1995 when the initial complaint had been filed by Rajender Kumar Tiwari and when the names of Kailash Nath and Ramesh had surfaced. 40 The impugned judgment dated 28.02.2011 has convicted them for the offence under Section 120-B of the IPC. The law on criminal conspiracy is well settled. A criminal conspiracy is generally hatched in secrecy for which direct evidence is normally not forthcoming. This offence although a substantive offence can be proved either by adducing circumstantial evidence or by way of necessary implication. However in the event that the circumstantial evidence is incomplete or vague, what is necessary is the meeting of minds. In order to constitute an offence of conspiracy, it is not necessary that the person involved has knowledge of all the stages of action. 41 In this background and applying this test to the aforementioned case, it cannot be said that Kailash Nath and Ramesh had not conspired with Satish Kumar Bhalla to obtain illegal gratification from Rajender Kumar Tiwari. The testimony of Rajender Kumar Tiwari about the involvement of Kailash Nath and Ramesh could not be crucified in the cross-examination of the said witnesses. The complainant was given as early as in 1995 (in Ex.PW-6/A) and thereafter in his version in Court on oath on 26.10.2006 (when he appeared for the first time in Court in the trial of Satish Kumar Bhalla) and then again when he appeared in Court for the second time in the trial of Kailash Nath and Ramesh, had on all occasions testified the role of Kailash Nath and Ramesh right from the inception. In fact, the complainant had first met Kailash Nath and Ramesh who had guided him to approach Satish Kumar Bhalla and it was on their say that he had approached Satish Kumar Bhalla. The complicity of all the accused is writ large. 42 DW-1 (in the trial of Satish Kumar Bhalla) had testified that Kailash Nath was the Assistant Accountant Officer and Ramesh was the then Dealing Assistant; neither could do the job which was required by the complainant. The complainant has nevertheless categorically deposed that it was held out to him by all the three

accused persons that they could get his bill revised. 43 In this context, the observations of a Bench of this Court in ILR (2005) II Delhi Gopal Singh Vs. CBI are also relevant and extracted herein as under:

It has to be added that in cases under prevention of Corruption Act, the prosecution is under no obligation to prove that a public servant demanding bribe was in a position to help the person from whom the bribe was being demanded. The prosecution succeeds the moment it is shown that a public servant had accepted some money from someone, which was not legal remuneration, the presumption under Section 20 of the Act comes into play shifting the burden upon the public servant to explain as to why he had received the money. A public servant may misguide, mislead or befool him victim to pay him illegal gratification knowing fully well that he is not in a position to help the complainant/victim, the money received by him does not amount to illegal gratification.

44 The next submission of the learned counsel for the appellants Kailash Nath and Ramesh that the supplementary statement of the complainant is not a part of the record is not borne out. That apart even as per the version of PW-5 ACP Ramesh Kaushik, the supplementary statement of the complainant was recorded on 22.01.1999. No cross-examination on this count has been effected of this witness. This argument is neither here nor there. 45 All the three appellants are guilty of the offences for which they have been convicted and sentenced. 46 The offence is of the year 1995. The appellants were all along on bail. They had never abused that process. As such, on the point of sentence, this Court is inclined to modify it. Satish Kumar Bhalla has been sentenced for a maximum period of 4 years. His sentences are to run concurrently. His substantive sentence for both the offence is reduced from a period of 4 years and 3- years to 24 months for each of the offences punishable under Section 7 and Section 13 (1)(d) of the said Act. Sentence of fine is unaltered. In the case of Kailash Nath and Ramesh, their sentence is also modified and their substantive sentence of 3 years is reduced to 18 months for each of the offences. The fine shall remain unaltered. 47 Appeals disposed of in the above terms. INDERMEET KAUR, J JANUARY 10 2014/A