

N.A. Suryanarayana @ Suri Vs. State By Inspector of Police

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Court : Karnataka

Decided On : Nov-28-2014

Judge : THE HONOURABLE MR.JUSTICE A.V.CHANDRASHEKARA

Appeal No. : CRL.A.No. 1339 of 2003

Appellant : N.A. Suryanarayana @ Suri

Respondent : State By Inspector of Police

Judgement :

(Prayer: Crl.A Filed U/S.374(2) Cr.P.C By The Advocate For The Appellant Against The Judgement Dt. 31.7.03 Passed By The Xxi Addl. C.C Judge And S.J and Spl. Judge For Cbi Cases, B'lore-In Spl.C.C.N0.57/98-C0nvincing The Appellant-Accused For The Offences P/U/S.7 And U/S. 13(2) R/W Sec. 13(1)(D Of- The Prevenction Of Corruption Act, 1988 And Sentencing Him To Undergo R.I. For Two Years And To Pay A Fine Of Rs.5,C00 (Rupees Five Thousand) And I.D., Of Payment Of Fine, To Undergo Further Period Of Three Months Imprisonment For The Offence P-U/S. 7 Of Prevention Of Corruption Act, 1988 And Further Sentencing Him To Undergo R.I. For Three Years And To Pay A Fine Of Rs.5,000/- (Rupees Five Thousand) And I.D., Of Payment Of Fine, To Undergo Further Imprisonment For Three Months For The Offence P/U/S. 13(2) R/W Sec. 13(1) (D) Of The Prevention Of Corruption Act 1988. The Substantive Sentences On Both The Counts Shall Run Concurrently.)

1. Appellant was the lone accused in Spl. C.C.57/98 on the file of XXI Additional City Civil and Sessions Judge and Special Judge for CBI, Bangalore. He has been convicted for the offences punishable under Section 7 and 13(2) of the Prevention of Corruption Act, 1988, (hereinafter referred to as the Act, for brevity) read with Section 13(1)(d) of the said Act, on 31.7.2003 and has been sentenced to undergo R.I. for 2 years for the offence punishable under Section 7 ana to pay a fine of Rs.5,000/-, and to undergo R.I. for 3 years for the offence punishable under Section 13(2){d) of the Act and to pay fine of Rs.5,000/-, in default, to undergo further imprisonment for a period of three months. It is this judgment of conviction and sentence which is called in question on various grounds as set out in the appeal memo.

2. The facts leading to the filing of the special case at Bangalore are as follows:

a) Accused was working as Program Executive in Doordarshan Kendra, Bangalore, during the period January 1997 to September 1997 and was holding charge of Sponsor Section. Complainant-Shamsundar claiming to be the proprietor of a tele serial producing firm run under the name and style as Yantra Software, No.48, 4th Temple Street, Vyalikaval, Bangalore, had produced a five-minute sponsored tele-serial called Chalanachitra Vikshisi and it was of 26 episodes. Doordarshan Kendra had given approval to telecast the same and the telecast started from 29.4.1997.

b) The allegation against the accused is that he started demanding the complainant-Shamsundar to pay him bribe of Rs.20,000/-, lest his tele-serial would not be telecast. The complainant did not pay heed to the same

and did not want to pay any bribe to the accused. Accused is said to have refused to issue program telecast certificate to the complainant which was essential to take payment from advertising agencies. It is further alleged that on 16.9.1997, accused again demanded the complainant to pay him bribe of Rs.20,000/- in Meghsagar Hotel, Bhashyam Circle, Sadashivanagar, Bangalore. Being unwilling to pay the bribe, complainant lodged a complaint before the CBI police, Bangalore, on 16.9.1997 on the basis of which a case came to be registered against him.

c) A trap was laid by a team of CBI officials which team included independent witnesses, complainant and the trap laying officer accompanied by the staff. According to the prosecution, the trap laying officer accompanied by his staff, complainant and independent witnesses went near Meghsagar Hotel at 7.10 p.m. on 16.9.1997. Complainant and two independent witnesses went to the said hotel and when the accused demanded the complainant to pay him bribe of Rs.20,000/-, complainant paid the sum which was received by the accused.

d) A few minutes thereafter, complainant came out of the hotel and signaled to the trap laying officer who was standing at a little distance from the hotel, along with his staff and they rushed to the hotel and caught hold of the accused. His two hands were dipped in sodium bicarbonate solution as a result of which it turned pink-red. Since it was not possible to write a detailed mahazar in the hotel which was full of customers, the trap laying officer and his staff accompanied by the complainant and independent witnesses and the accused went to the CBI office and drew up a detailed recovery mahazar and the matter was intimated to the jurisdictional learned Special Judge.

e) The case of the accused is one of total denial of the allegations made against him. It is his case that he had no capacity to do any official favour to the complainant and therefore, the question of demanding bribe or receiving bribe does not arise. It is argued that the complainant himself was expected to pay dues in regard to the telecast of a few episodes and since he did not pay the fee, he was insisted to pay the requisite fee. It is his case that he neither demanded any bribe nor received any amount and it was thrust into his banian in the hotel and this was resisted by him. It is argued that the complainant's mother was the producer of the serial and she had been called upon to execute a minimum guarantee agreement and to pay telecast fee. In the light of non-compliance of the requisite fee, telecast certificate could not be issued and this has been suppressed by the complainant who is in no way concerned with the tele-serial Chalanachitra Vikshisi in question.

f) Two documents have been got marked on behalf of the accused by confronting the same to the complainant and they are Exs.D1 and D2. Accused has been examined under Section 313, Cr.P.C. and he has answered all the questions. One defence taken up by him is that the complainant had not paid the requisite minimum guarantee fee and telecast fee and therefore, he was called upon to pay the same, in writing. Being unwilling to pay the same and to get telecast certificate without pay the same, he has falsely implicated him by thrusting money into his banian and that he never demanded him to pay bribe.

3. Learned counsel for the appellant has submitted his arguments elaborately and has relied on innumerable decisions in regard to the alleged demand of bribe and receipt of bribe, his capacity to do any official favour and the defense taken on behalf of the accused. It is argued that the initial burden cast upon the prosecution has to be effectively discharged and unless it is discharged, the onus does not shift on the other side. It is argued that the presumption available under Section 20 of the P.C.Act cannot be taken into consideration unless the alleged receipt of bribe money is preceded by demand, as contemplated under Section 7 of the Act. It is argued that there was absolutely no scope for the accused to do any official favour since the telecast certificate had to be issued only by the Director and that he is only a subordinate to the Director and that he had instructed his subordinate not to issue telecast certificate until the requisite amount due from the complainant was paid.

4. The learned counsel appearing for the appellant has vehemently argued that certain inconsistencies and

lacunae in the prosecution case have not been taken into consideration by the trial court while evaluating the evidence. It is argued that inordinate delay in submitting the recovery mahazar to the Jurisdictional Magistrate speaks volumes against the case of the prosecution. It is argued that the Investigating Officer did not prepare any rough sketch in regard to the spot where the complaint, and accused and other shadow witness and official witnesses had reportedly sat in the hotel. It is argued that responsible officer of Doordarshan Kendra namely Director should have been summoned to examine the file produced and marked as Ex.P-8. It is argued that the official, who represented the Doordarshan Kendra in the Trial Court is not competent to speak about the official favour to be done by the accused and scope for demanding bribe. It is further argued that the very evidence of PW-2 complainant is silent about the entry of Ramanath and PW-1 to the hotel and witnessing the alleged receipt of bribe by both of them. It is argued that there is glaring inconsistency in regard to the notes being handed over which were in cover. This admission culled out from the mouth has been ignored. It is further argued that mahazar should have been drawn in the hotel itself when it took sufficient time to conduct other procedures in the hotel.

5. It is argued that inordinate delay in submitting recovery mahazar would give rise to serious suspicion in the mind of the Court. It is argued that on considering the totality of the case, it is evident that the accused had no connection whatsoever -with the tele serial in question and it is his mother Mvnavathi who was the producer of the tele serial and PW-2 has falsely implicated this accused. It is argued that presence of this accused in the hotel on 16.9.1997 was on the invitation of his friends and this has been taken advantage by the accused to lay a trap. It is argued that trap laying officer, i.e. PW-3 did not record further statement of the complainant and statements of PW-1 and CW-3 on the same day or on the very next day and that the entire file was handed over to PW-7, who recorded the statements of material witnesses at a belated stage. It is argued that recording the statements of material witnesses belatedly has resulted in embellishment of the present case. It is argued that obtaining statements from the accused soon after the trap is absolutely required and no opportunity was given to him to have his say soon after the alleged trap. It is argued that one of the hotel suppliers/'managers should have found a place in the recovery mahazar.

6. Learned counsel for CBI has supported the impugned judgment. He has argued that minor inconsistencies will have to be ignored in a case like this, in which evidence was recorded long after the trap was laid. It is argued that official, who has been examined on behalf of Doordarshan Kendra was working with the very accused and was conversant with the facts of the case. It is argued that there is acceptable evidence in regard to the official favour that could have been done by the accused and scope for demanding bribe and receipt of bribe and actual demand and receipt of bribe. It is argued that non preparation of a rough sketch by the investigating officer and belated recording of statements of material witnesses in trap case will not dilute the credibility of the witnesses. It is argued that prosecution has discharged its initial burden of proving the factum of demand for bribe and receipt of bribe and scope for receipt of bribe. He has relied upon the decisions reiterated in the case of STATE OF KERALA and ANOTHER .v. C.P.RAO reported in [2011] 2 SCC (CrI.) 1010, in the case of STATE OF ANDHRA PRADESH .v. V.VASUDEV RAO reported in 2004 SC 960 in the case of BECHAAR BHAI S.PRAJAPATI v. STATE OF GUJURAT reported in AIR 2009 SCW 698 and in the case of STATE BY CBI, HYDERABAD . v. G.PREMRAJ reported in AIR 2010 SC 793.

7. Further, it is argued that accused who has taken up the defence of tainted money being thrust into his banian, has not been able to probabalise and this lends credence to the case of the prosecution. It is argued that testimony of complainant for demand of bribe and receipt of same is corroborated by the evidence of PW-1 and trap laying officer. It is argued that non-examination of witnesses who has accorded sanction is not fatal to the case and that sanction order itself discloses the application of mind of the authority according sanction under Section 19 of the Act. It is further argued that if accused was very much bent upon this aspect being considered at the threshold, he should have requested the Court to treat it as preliminary point and having not done so, he cannot now turn round and say that there is no valid sanction.

8. It is argued that drawing up of mahazar in CBI office, will not affect the case of the prosecution in the light of main events having taken place in the hotel. In the light of several customers being present at that point of

time, it was not practically possible to draw a detailed mahazar in the hotel which was full of customers. It is further argued that accused meeting the complainant in the very hotel discloses his intention and speaks volumes against him.

9. After going through the records and hearing the learned counsel for the accused and the learned counsel representing CBI, the following points arise for consideration by this court:

1. Whether the prosecution of the accused in the present case is preceded by a valid order of sanction as contemplated under Section 19 of the Act?
2. Whether there was any scope for the present accused to do any official favour in order to demand bribe from PW-2- Shamasundar?
3. Whether the alleged receipt of bribe money from PW-2 is preceded by demand as contemplated under Section 7 of the Act?
4. Whether the trial court has taken all relevant into consideration in order to convict the accused for the above offences?
5. Whether any interference is called for, and if so, to what extent?

REASONS

Point No. 1

10. As already pointed out by the learned counsel for the appellant, there must be a valid sanction to prosecute a public servant for violation of the provisions of the Prevention of Corruption Act. In the present case, Ex.P4 is the sanction order dated 21.7.1998 issued by the Secretary to Government, Ministry of Information and Broadcasting, Mr.P.G.Mankad. This has been got marked through PW6-investigating officer who laid the charge sheet. What is argued before this court is that the very author of Ex.P4 has not been examined and mere marking of Ex.P4 does not dispense with its proof. Hence it is argued that there is no sanction in the eye of law, and the accused could not have been prosecuted.

11. Per contra, learned counsel representing CBI has vehemently argued that the author of Ex.P24 could not be examined as he was in Philippines and he could not be secured in spite of several steps being taken. He has argued that though the draft of sanction order had been sent to the author of Ex.P24, he has applied his mind independently and has taken an independent decision to grant sanction only on being satisfied about the existence of a clear case. The trial court has formulated point no.(1) paragraph 7 of the judgment and the same is as follows:

Whether the prosecution proves that the sanction order-Ex.P24 issued by the Secretary to Government, Ministry of Information and Broadcasting, is valid and legal?

It is true that PW6 has admitted that draft sanction order had also been sent along with the records to the author of Ex.P24.

12. In the case of MOHD.IQBAL AHMED .v. STATE OF ANDHRA PRADESH (1979 SCC 926), the Hon'ble Apex Court has held 'that the sanction granted by the sanctioning authority could be proved either by producing the original sanction which itself contains facts constituting grounds, or by adducing evidence to show that the facts were placed before the sanctioning authority and the satisfaction arrived at by it.' In the present case, after perusing the original sanction order-Ex. P24 placed before this court, it contains all materials to make out a clear prima facie case constituting the offence under Sections 7 and 13(2) read with 13(1)(d) of the Act.

13. In another decision reported in 1995 Cr.L.J. 955 between RAJA SINGH .v. STATE (MADRAS) it is held

'that 'the sanctioning authority must apply its mind to the facts alleged and only on being satisfied that the sanction was necessary. the sanction order should be signed.' Even though the sanctioning authority has not been examined in the present case as a witness, the sanction order contains all requisite details of records perused by him and the statements of material witnesses which he has examined before granting sanction. The sanction order-Ex. P24 is a two-and-a-half page document and there is specific reference about the incident of bribe being accepted by the accused, and it is being witnessed by independent witnesses and the handling of bait money by the accused and receipt of it through illegal means by abusing his official position as a public servant.

14. PW6 has deposed in his evidence that he had sent the draft sanction order along with copies of statements and investigation report to the sanctioning authority. He has also admitted about the relevant sections of the Prevention of Corruption Act being mentioned in the draft order. This is sought to be blown out of proportion by the learned counsel for the appellant to contend that the author of Ex.P24 has not at all applied his mind but has mechanically signed the draft sanction order. If the evidence of PW6 is read as a whole in the light of detailed analysis found in Ex.P24, this court is of the opinion that even on re assessment of the entire evidence, there cannot be any different opinion than the one taken by the trial court regarding validity of the sanction. Suffice to state that the sanction order depicts clear application of mind by the sanctioning authority on the basis of relevant materials sent to him inclusive of statements of material witnesses and copies of final report. Thus prosecution of the appellant is by valid sanction as contemplated under Section 19(1) of the P.C.Act

Point No. 2

15. In a trap case relating to the role of a public servant receiving bribe money, prosecution is expected to discharge its initial burden to prove that the public servant in question had capacity to do official favour in order to demand bribe and that the said bribe amount was received only after demand as contemplated under Section 7 of the Act. In the case of STATE OF ANDHRA PRADESH .v. K.NARASIMHACHARY (2006 Cr.L.J. 518 (SC), the Hon'ble Supreme Court has specifically held that 'the court is expected to look into closely as to whether the accused had the official role to play in order to do an official favour.' As per the facts in the said case, the accused was merely a recommending authority and not the authority to issue valuation certificate. The accused therein was not even a clerk for issuing property valuation certificate. In fact the certificate had already been forwarded and sent to the official authority before the alleged demand for bribe was made by the accused. The above said circumstances created a doubt in the mind of the trial court and hence accused had been acquitted. In challenge before the High Court, the order of the trial court was confirmed, and the matter was taken up in further appeal before the Hon'ble Supreme Court, which has confirmed the order of the special court as well as the High Court. Therefore we will have to re-assess the evidence in this case relating to this aspect.

16. PW-2 -Shamsundar is the proprietor of the firm run under the name and style YANTRA SOFTWARE with its registered office at No.48, 4th Temple Street, Vyalikaval, Bangalore-560 003. He is the son of a former film actress, Smt.Mynavathi. Ex.P1 is the written complaint lodged by him on 16.9.1997 before the CBI police requesting to take action against the accused on the ground that he demanded Rs.20,000/-. In his oral evidence, PW-1 has deposed that the tele-serial Chalanachitra Vikshisi was being telecast for five minutes on every Sunday under the Minimum Guarantee Program and it was of 26 episodes. By the time he chose to lodge the complaint before the police, 15 episodes had already been telecast and if the serial were to go on uninterrupted for 26 weeks, he would have profited ranging from 4-5 lakh rupees, and it would also bring revenue to Doordarshan Kendra by way of commercials. He has deposed in paragraph 2 that he had requested Doordarshan Kendra to reduce the minimum guarantee time or to repeat the program in the same week, and that the director is said to have agreed to the said proposal and a note was made by the director in this regard. Many weeks after such negotiation, he approached the Doordarshan Kendra office and the accused- Suryanarayan was said to be in charge of the section. On being requested by PW-2 to give him a letter about what was agreed by the director, Suryanarayan is said to have demanded Rs.20,000/- as bribe.

Apart from this, he is said to have not issued telecast certificate respect of the episodes already telecast and is said to have insisted on issuing telecast certificate as he was already losing money. Therefore he did not think of paying bribe and thought of approaching CBI officials. In this regard on 16.9.1997 he met the Superintendent of Police of CBI in his office and after some time he was taken to the chambers of one Kumar, Inspector. On hearing the narration, he is said to have given written complaint which is marked as Ex.P1.

17. For better appreciation of the facts of the case, it is necessary to extract the entire Ex.P1 dated 16.9.1997 which is as follows:

From:

Shyamsunder,

Proprietor,

Yantra Software,

No.48, 4th Temple Street,

Vyalikaval, Bangalore-3.

The Superintendent of Police,

CBI, No. 36, Bellary Road

Ganganagar,

Bangalore-32.

Sir,

I am the proprietor of the above mentioned software firm, which makes Telefilms for telecasting by the Door Darshan Kendra, Bangalore. I am in this industry for the past 11 years. At present, my tele serial named CHALANA CHITRA VEEKSHISI is being telecast for 5 minutes on Sundays under the Minimum Guarantee Scheme. The serial contains 26 episodes. Of which 15 episodes have already been aired. If the serial goes on air uninterrupted for 26 weeks, I may have a profit of anything between Rs.4 lakhs and Rs.5 lakhs. My serial also fetches a good revenue to the DDK by way of commercials.

Some time during the first week of August 1997, Sri Suryanarayana, the Programme Executive of DDK , Bangalore demanded a sum of Rs.20,000/- as bribe stating that it was he, Who allowed the serial to go on air un interrupted. When I refused to pay any bribe he threatened me, saying that my serial may be stopped any time. Thereafter, on few occasions he used to ask me as to whether I would pay the amount which he demanded earlier or not. I had then curtly told him that I can not pay any bribe.

To-day at about 10 AM Sri Suryanarayana, called me over phone and said that still 11 more episodes are remaining to be aired and demanded that I should pay him the amount of Rs.20,000/- by today evening 7 O'Clock, in Hotel Megsagar near Bashyam circle. He further stated that if I do not pay as he demanded, he would ensure that my serial will be stopped abruptly.

Sir, I do not want to pay any bribe to Suryanarayana and I request you to take necessary action as per law.

Yours faithfully

Sd/- (Shamsunder)

The complaint marked as Ex.PI was referred to Kumar, Inspector, but there is no reference about the demand

made by PW-2 to the accused to give him telecast certificate as he was losing money, though. 15 episodes had already been telecast. What is mentioned in Ex.P1 is that accused demanded him to pay Rs.20,000/- as it was he who allowed the serial to go on uninterruptedly. The contents of Ex.P1 contradicts with the oral assertion of PW-1 found in the examination-in-chief.

18. Evidence of a witness includes cross-examination. He has deposed that his mother has no connection with YANTRA SOFTWARE at Bangalore. He has admitted in his cross-examination that one has to make an application to get a tele-serial telecast and only after approval, the serial will be telecast, and that an agreement will have to be entered into that regard.

19. PW-2 has further admitted in his cross- examination that the minimum guarantee will be firstly paid by the recommending agency to Doordarshan Kendra and in turn producers or sponsors will pay the minimum gurantee amount to the agency. He has admitted that there will be no agreement between the sponsors and recommending agency or sponsors and producers for payment of minimum guarantee amount to Doordarshan Kendra. Further admission has been culled out from his mouth tc show that whenever minimum guarantee programs are sponsored, the recommending agency has to pay the minimum guarantee amount to Doordarshan Kendra and it is not the responsibility of either the producer or sponsor to make such payment. He has admitted a suggestion as true that the sponsors will pay the amount to the producers only after release of the film and that for the telecast of the film, Doordarshan Kendra will issue a certificate either to the producer or to the recommending agency. He has further admitted a suggestion that the certificate will be issued within a day or two after telecast of the film, as true. He has volunteered that he did not know that once telecast starts, it is only the director of Doordarshan Kendra who can interrupt and not any other person.

20. Admittedly Suryanarayana was not the director, but was only a program executive. Even if this evidence were to be accepted as true, Suryanarayana was not the official authority to interrupt and stop telecast of the serial and to issue certificate so as to enable the producer to get the amount from sponsors. At the best, accused could have only recommended for issuing telecast certificate if all the conditions are complied with. If they are not complied, he can recommend for not issuing such certificate.

21. As per the evidence of PW-2 found in paragraph 8, Srinivas was the director of Doordarshan Kendra who is stated to have held a meeting on the basis of the letter given by him. He has feigned ignorance as to the presence of other persons apart from the director. It is his case that the director had made a note in the said meeting, but does not know what exactly was the note made. The director is said to have accepted his proposal, i.e. (i) for reducing minimum guarantee time and (ii) to repeat the program many more times. He has feigned ignorance as to the date on which such note was made or the meeting held by the director. This meeting is said to have been held prior to the telecast of the serial. He has further feigned ignorance as to whether there was any complaint till he filed the complaint. He has even feigned ignorance as to the date on which he met the director, Mr.Srinivas and how many times he met him before telecast of the serial with regard to the tele-serial. The file got marked as Ex.P8 does not disclose anything about these aspects.

22. The best person who could have spoken about the alleged meeting said to have been convened by the director at the instance of PW-2 and the noting made, was the then director himself. He has not been examined, though the file relating to the serial in question has been summoned from Doordarshan Kendra and got marked as Ex.P8. This assumes more significance in the light of important admissions culled out from his mouth which is relevant. The same is reproduced below:

'After few days after I gave my letter to the director, I requested the accused Suryanarayan to give me the letter about what was agreed by the director, but i do not remember exactly the date. When I requested the accused to give the letter, firstly he told me that he is required one or two days for giving that letter to me. Thereafter I met the accused 3-4 times and for giving the letter the accused demanded bribe from me. Then I went to the director and told that the accused is not giving me the letter, but I did not tell about the demand

made by the accused for the bribe.

There was no hindrance or any obstacle for me to bring to the notice of the director about the bribe amount that he has demanded.'

23. As already discussed, Srinivas who was the director of Doordarshan Kendra at the relevant point of time, is neither cited as a witness nor examined as a witness by the prosecution before the trial court.

24. On the other hand, Shivaraj who was working as Lower Division Clerk in Sponsor Section of Doordarshan Kendra has been examined as PW-4. His duty was only to issue a certificate in respect of tele-serials already telecast. After preparing the certificate,, the same would be placed before the program executive for signature. If the program executive is not in station, it would be placed before the higher authority. The accused- Suryanarayana was working as program executive in Doordarshan Kendra at the relevant point of time. He has deposed that the tele-serial called Chalanachitra Vikshisi had been telecast from Doordarshan Kendra, Bangalore for which purpose a certificate was to be issued. According to him, PW-2-Shamsundar was the producer of the said tele-serial. Accused is said to have informed him once in 1997 that he should not prepare telecast certificate pertaining to the tele-serial and accordingly he had not prepared the same.

26. Evidence includes cross-examination. According to the accused, Harish and Sridhar were also working as production assistants in Doordarshan Kendra. In the year 1997, accused had no separate chamber to sit and all of them were sitting in one room. Two days prior to the trap, Harish and Sridhar had come to the table of the accused and the complainant-Shamsundar was also near the table of the accused. At that time, accused received a phone call and replied that he would come to Meghsagar Hotel on the evening of 16.19.1997 and they could talk about the film. This phone call, according to PW-2, was received at 10.30 a.m.

27. PW-4 has deposed about the procedure to be followed before issuing telecast certificate. In paragraph 8 of his deposition, PW-4 has specifically assigned the reason as to why the certificate was not prepared. As the party had not paid telecast fee, accused had informed him not to prepare the telecast certificate. In this regard the evidence of PW-2-Shamsundar is relevant. He has admitted the suggestion as true that he had made the application before telecasting of the serial and later received information from Doordarshan Kendra. He has admitted that a committee in Doordarshan Kendra would scrutinize the same and then only it will be approved. He has admitted that there will be a recognized agency for telecasting the serial and at that time M/s Multi Channel was his recognized agency in respect of this serial. According to him, at the relevant point of time, Manohar Shetty was managing the affairs of s Multi Channel which has its head office at Bombay and regional office at Bangalore The agency was paying Doordarshan Kendra for those programs and all correspondences in respect of programs would be between Doordarshan Kendra and the recommending agency. He has volunteered that at times correspondences may be between Doordarshan Kendra and producers. He has specifically admitted that Chalanachitra Vikshisi was under the minimum guarantee scheme and five minutes time had been allotted to the said serial out of which a minimum of two minutes was for commercials.

28. The minimum guarantee amount will have to be paid first by the recognized agency to Doordarshan Kendra and in turn producers or sponsors will give that amount to the recognized agency . He has deposed that whenever programs are sponsored, the recognizing agency has to pay the minimum guarantee amount to Doordarshan Kendra and it is not the responsibility of either the producer or the sponsorer to make such payment. According to him, in this case also the recognizing agency, M/s Multi Channel was responsible to pay minimum guarantee amount to Doordarshan Kendra. It is his case that as producer he may also pay the entire amount and could collect the same from sponsorers. He has specifically admitted a suggestion as true that the amount would be paid to him only after the release of the film. In this regard the telecast certificate had to be issued and such certificate will be issued to the producer or recognizing agency. He has admitted that if the film is telecast, he will get the certificate within a day or two after telecast of the film.

30. In this regard it is relevant to look to the materials placed on record by Doordarshan Kendra relating to

the tele-serial in question. The file is marked as Ex.P8. The contract entered into between Multi Channel and Doordarshan Kendra on behalf of the producer is also produced.

31. During the course of cross-examination, two documents have been of confronted to PW-2 and they have been marked as Exs.D1 and D2. Ex.D1 is a letter addressed by Bhaskar, executive producer for director of Doordarshan Kendra, to Smt.Mynavathi, mother of PW-2 on 26.2.1997 with reference to her letter dated 31.1.1997 seeking approval for sponsoring of the tele-serial titled Ciialanachitra Vikshisi for five minutes duration under the Minimum Guarantee Program. The said letter was to intimate about according sanction for telecasting the above serial for 26 weeks from the week telecast would commence.

32. Ex.D2 is a letter addressed by accused- Sri. Suryanarayan as program executive on 25.8.1997 to Mynavathi about the serial Chalanachitra Vikshisi of five minutes duration. The following are the contents of Ex.D2:

GOVERNMENT OF INDIA DOORDARSHAN KENDRA BANGALORE

#BNG/DDK/SP/53(I)/97/ 153/6958 TO

Mrs S. MYNAVATHY 555/14, 12 'C' CROSS VYAIJKAVAL BGANGALORE-560003.

SUB: - Minimum Guarantee of Chalana Chitra Veekshisi- 5 minutes sponsored programee-Reg

Madam,

This is to inform you that as per the letter #BNG/DDK/MIS/97P dated 26.2.97 issued by Shri.S.Bhaskar, Executive Producer of this Kendra you have to place MG contract of 60 seconds from episode 1 to 5 and 120 seconds from 6th episodes onwards. Hence you are requested to kindly revise your MG contracts as per the above letter at the earliest.

Yours faithfully,

Sd/-

(N.A. SURYANARAYANA) PROGRAMME EXECUTIVE FOR DIRECTOR

Sd/-

(SHYAM SUNDER) 11.09.1997

PW-2 has admitted the receipt of this letter on 11.9.1997 by putting his signature. The contracting agency, M/s Multi Channel was expected to execute the minimum guarantee contract as per the letter dated 25.8.1997 (Ex.D2).

33. Ex.P13 is the letter dated 10.11.1997 addressed by Bhaskar, executive producer, Doordarshan Kendra, to the inspector of police, CBI, Pradeepkumar, enclosing the contract with regard to Chalanachitra Vikshisi between Doordarshan Kendra and Multi Channel on behalf of YANTRA SOFTWARE. As already discussed, Exs.D1 and D2 are addressed to Mynavathi, mother of PW-2. If Mynavathi was not the authorized producer of the serial, correspondence would not have been made to her. PW-2 has not placed anything on record to show that be was the producer of this serial and also the owner of YANTRA SOFTWARE, except making an assertion in the examination-in-chief. Ex.P14 consists of 10 documents sent by Bhaskar relating to the serial, Chalanachitra Vikshisi. In all these documents, the word 'credit' has been mentioned. These were contracts entered into between the executive producer of Doordarshan Kendra and the recognized agency, M/s Multi Channel.

34. As already admitted by PW-2, it was the recognized agency, Multi Channel which was expected to pay the minim am guarantee fee as also telecast fee. In spite of several requests, the said amount had not been paid

and the facility provided to the agency was credit facility. Therefore, accused was duty bound to demand the amount to be paid before issuing telecast certificate. Once telecast certificate is issued, the recognized agency or the producer would be able to get the benefit from sponsors. It is in this regard Ex.D2 was issued on 25.8.1997 after telecasting substantive number of episodes accordingly.

35. In Ex.P8 there is a letter dated 25.6.1997 addressed to Shamsundar on behalf of YA.NTRA SOFTWARE to the director, Doordarshan Kendra, requesting him to telecast at least two additional telecasts in a week between Monday and Saturday at any available timeslot after 4.30 p.m. He was willing to pay additional telecast fee as per the rate card. Though there is an endorsement by the concerned that it may be provided between 4.55 p.m. and 5.00 p.m. on Wednesday and Friday, nothing is placed on record to show if additional fee was paid and the program was telecast accordingly.

36. Another letter is dated 5.7.1997 which is part of Ex.P8. It is addressed by Shamsundar to the director referring to the discussion they had, requesting to allow timeslot for two additional telecasts, preferably on Wednesday and Friday. There is an endorsement made by the director or program executive which is as follows:

This was discussed earlier with QTC. We may agree as sponsor would pay the required fee.'

It is not the case of PW-2 that additional telecast was done on Wednesday and Friday and that he had paid the requisite fee. PW-2 has specifically admitted in his evidence on 16.2.2000 about the letters addressed by Doordarshan Kendra in the name of his mother through post. He has further deposed that his mother never used to go to Doordarshan Kendra office to receive the letters. He had been confronted with the letter dated 26.2.1997 (Ex.D1) addressed to his mother by Doordarshan Kendra and he has admitted receipt of the said letter. He has admitted the endorsement made by him on the said letter as Ex.D1(a) also. He has admitted the suggestion as true about the receipt of Ex.D1 and receipt of letter dated 25.8.1997 marked as Ex.D2 personally and the signature subscribed by him on 11.9.1997 for having received Ex.D2. Though he has deposed that he had sent reply to Ex.D1, he does not recollect as to the contents of the reply given by him. He had not entered into any agreement either with Doordarshan Kendra or the recognized agency for minimum guarantee period of 1 minute for free commercial for the first five weeks and 2 minutes for five episodes, as stated in Ex.D1. It is evident that PW-2 or his mother had not given any guarantee as per the requirements of the letter marked as Ex.D1.

39. An important suggestion culled out from the mouth of PW-2 mouth is very relevant to the defence taken up on behalf of the accused. PW-2 has admitted a suggestion as true that Doordarshan was insisting him to comply with the requirements of Ex.D1. He has admitted the letter addressed by the accused vide Ex.D2 and receipt of the said letter by him. He is stated to have sent a reply to Ex.D2, but no material is placed on record to that effect, except stating that he does not remember as to what reply he had sent and after how many days.

He has further feigned ignorance as to whether he had sent any reply to Ex.D2 before 11.9.1997 or after that date. He has further admitted that he has to find out from his agency whether the contract is revised or not, as mentioned in Ex.D2.

40. Another important admission culled out from his mouth is found in the last few lines of paragraph 9 of his cross-examination. The same is relevant and reproduced below:

It is true in the said reply we have pleaded inability to comply the requirements as mentioned in Ex.D1. It is true in spite of negotiations with Doordarshan Kendra, they were insisting upon me to comply the requirements as mentioned in Ex.D1.

Question: When in spite of your request Suryanarayan, the accused gave the letter as per Ex.D2 asking you to revise the contract, did you feel that Suryanarayan is insisting upon you to revise the contract and as such did

you feel bad about Suryanarayan?

Ans: No. I did not feel bad towards accused Suryanarayan.'

41. We will have to see as to whether the accused was competent to issue telecast certificate and also to issue a copy of the notes of the meeting stated to have been held between PW-2 and the director of Doordarshan Kendra long prior to 16.9.1997. Prosecution is expected to prove the contents of Ex.P12 containing allocation of duties and Exs.P13 to P15. This court does not understand as to why Ex.P12, a document dated 24.12.1996 is got marked. Ex.P12 discloses about the allocation of duties in respect of executive programs, ASDs and program officers. The accused-Suryanarayan was in charge of looking after administration work relating to sponsored programs and sponsored serials. Ex.P12 does not disclose that accused was competent to issue telecast certificates and copies of the notes of meeting of the director. The best person who could have spoken about this was the then director or subsequent director, but he has not been examined. This is a glaring lacuna in the case of the prosecution and this will have to be taken into consideration in the light of important admissions culled from the mouth of PW-2.

42. As already discussed, accused in this case had no authority either to issue telecast certificate or a copy of the meeting notes of the director. Even if he was expected to issue telecast certificates, payment of telecast fee and minimum guarantee fee either by the complainant or the recognized agency- Multi Channel, was an absolute requirement. When PW-2 himself has specifically admitted is that Doordarshan was insisting him to pay minimum guarantee fee and telecast fee. The question of doing any official favour by the accused in order to demand bribe does not arise.

43. In the first charge framed by the Trial Court, there is a specific allegation that the accused, being program executive, during August and September 1997, demanded PW-2 to pay Rs.20,000/- as bribe to issue telecast certificate so as to enable the complainant to get payments from advertising agencies. There is no evidence at all in regard to payment of the requisite fee by the complainant or the recognized agency to Doordarshan Kendra for issuing telecast certificate. When Multi Channel had entered into a contract with Doordarshan Kendra being a recognized agency, it was competent to insist for a certificate, that too, only on payment of the requisite minimum guarantee fee and telecast fee.

44. If PW-2 or his recognized agency had paid the requisite fee and if there was insistence for issuance of the certificate and the accused had demanded the same, then it would have been something different. Accused has filed written statement at the time of his examination under Section 313, Cr.P.C. It is quite self-explanatory. It is not only during the course of cross-examination questions were put to PW-2 that payment of minimum guarantee fee and telecast fee was a sine quo non for issuing telecast certificate, but also during the course of his examination under Section 313, Cr.P.C. By effective cross-examination, useful admissions and answers have been culled out from the mouth of PW-2-complainant and PW-4-Shivaraj which probablize the case of the accused. In fact accused has gone to the extent of stating in his written statement that he had instructed his subordinate-Shivaraj (PW-4) not to issue telecast certificate till the minimum guarantee fee and telecast fee was paid. He has further stated in the written statement that he was not aware as to what was agreed by the director in the meeting said to have been held at the instance of PW -2 in Doordarshan Kendra. There is no evidence placed on record in regard to the alleged meeting held by the director of Doordarshan Kendra at the instance of PW2 and a note being made at his request.

45. Admittedly the evidence placed on record unequivocally discloses that Multi Channel had entered into an agreement with Doordarshan for payment of minimum guarantee fee and telecast fee and the facility provided to the agency was credit facility. So it is understandable as to how PW-2 or his agency could insist for issuing telecast certificate without payment of the requisite fee. It is in this regard the decision reported in 2006 CrI.L.J. 518 (SC) between STATE OF ANDHRA PRADESH .v. K.NARASIMHACHARY is relevant and applicable to the facts of this case. In fact the trial court has failed to consider this piece of evidence in the light of clear admissions culled out from the mouth of PW-2 and PW-4 during their cross-examination.

46. Thus on re-appreciation of the entire evidence, this court is of the opinion that the prosecution has failed to make out a clear case that the accused, being a public servant working in Doordarshan Kendra, was in a capacity to do official favour to PW-2 in order to demand money as bribe. Hence point no.(2) is answered in the negative.

Points No.3 and 4

47. Learned counsel representing CBI has vehemently argued that there is clear evidence in regard to handling of bait money by the accused and this is supported by the positive report of the Forensic Science Laboratory (FSL). Hence reliance is placed on Ex.P11 got marked through PW7. It is a report submitted on 19.9.1997 by the office of the chemical engineer, Government of Karnataka stating that the sealed bottles 1 and 2 and cover containing banian sent to them were examined and found that the finger wash of Suryanarayan and banian have proved positive for the presence of phenolphthalein powder in finger-wash of the AGO and the banian.

48. Apart from this, learned counsel for the CBI has vehemently argued that it was improper for the accused to meet PW-2 in the hotel on the evening of 16.9.1997 unless there was occasion for him to demand bribe and receive the same. He has relied on a decision of the Hon'ble Apex Court in the case of STATE OF ANDHRA PRADESH .v. K.PURANDAR RAO (2004 SCC [Cr.] 1908. As per the facts of the said case, PW-1 had gone to the house of the accused and a trap was laid. Soon after receipt of money by the accused, it was recovered from the possession of the accused. Chemical examination detected the presence of phenolphthalein in the bottles containing hand-wash of the accused and pyjama and bedcover of the accused. The explanation given by the accused in the said case was said to be highly improbable, more particularly when there was no enmity against him relating to independent witnesses examined.

49. Learned counsel for the CBI has relied upon another decision of the Hon'ble Supreme Court reported in 2009 AIR SCW 698 (BECHAARA BHAI .v. STATE OF GUJARATH). Even as per the facts of the said case, accused had demanded and accepted Rs.200/- from the complainant and the tainted currency notes were recovered from the accused and those notes proved positive for the presence of anthracene powder and it was found even on his trousers. In the present case, accused has taken up a defence that he never demanded bribe and never received bribe. It is his case that PW-1 tried to give bribe forcibly and when he refused by pushing his hand, it was thrust into his banian.

50. Relying upon the decision of the Apex Court reported in air 2010 SC 793(1) between STATE BY CEI .v. V.PREMRAJ, learned counsel for CBI has argued that the plea taken by the accused during the course of cross-examination as well as examination under Section 313, Cr.P.C., he has not been able to probablize the same and that non-probablizing the defence would strengthen the case of the prosecution.

51. Learned counsel representing the CBI has relied on yet another decision of the Hon'ble Supreme Court reported in (2010) 3 SCC 1067 between STATE OF MADHYA PRADESH .v. HARISHANKAR. Allegation against the accused therein was about demand to pay bribe of Rs.2,000/- from the deceased respondent no. 1 relating to grant of licence. Out of Rs.2,000/-, Rs.200/- was given which was subsequently recovered from him.

Accused therein had not given any acceptable explanation as to how he came in possession of the tainted currency notes, except stating that the same had been handed over to him by respondent no.1. On analyzing the facts of the case, the Hon'ble Apex Court held that 'unless there was understanding between the sole respondent and respondent no.1, there was no reason for respondent no. 1 to have given the sole respondent part of the money which he had received by way of illegal gratification.' Consequently the order of acquittal was reversed by the Hon'bie Apex Court.

52. Now we will have to see whether the accused had discussed with PW-2 about meeting in Meghsagar Hotel, Bangalore, on the evening of 16.9.1997 so as to demand and receive Rs.20,000/-. Learned counsel representing the CBI has relied on Section 20 of the Act in order to raise a presumption that the amount so

recovered from the accused is bait amount and a strong presumption arises about the receipt of bribe in terms of Section 20 of Prevention of Corruption Act of 1988. Mere possession of money with a public servant would be inadequate to raise a presumption under Section 20 of the Act. For better understanding, the provision of Section 20 is reproduced below:

20. Presumption where public servant accepts gratification other than legal remuneration.

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause

(a) or clause (b) of sub-section (I) 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.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give 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.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

53. Prosecution is expected to prove that the acceptance of bait money by the accused was preceded by demand. Hence heavy burden is on the prosecution to prove both demand as well as acceptance in a trap case. In the present case, the banian worn by the accused on the evening of 16.9.1997 while he was in Meghsagar Hotel is not seriously disputed. This was item no.3 sent to the chemical engineer for examining and sending report. The result is proved to be positive for the presence of phenolphthalein powder. Accused has also not seriously disputed the fact of wearing that banian on his body at that point of time.

54. In paragraph 3 of his deposition, PW-1 has denied a suggestion put to him that he offered money to the accused voluntarily, and that the accused refused to take the said amount and pushed his hands. He has further denied a suggestion put to him that he thrust the said amount inside the banian of the accused and the accused did not admit of having received the amount from him.

55. The normal procedure that would be adopted by the trap laying officer is to give an opportunity to the accused to give his statement about the receipt of bait money soon after washing his hands in sodium bicarbonate solution at the time of drawing recovery mahazar. Accused could be asked to give a statement in writing or if he is not in a position to write the statement, he can be asked to have his oral say which would be reduced into writing in the presence of the complainant, independent witnesses and thereafter it will be signed by all concerned including the accused. In the present case, the investigating officer has not complied with this important procedure.

56. PW-2 has feigned ignorance as to whether CBI officials asked the accused to give any explanation either in Meghsagar Hospital or in CBI office itself. Just because PW-2 has volunteered before court that accused had admitted of having received the amount from him. it does not assume much importance since PW-2 is an interested witness, being the complainant in a trap case.

57. PW3-Pradeepkumar, Inspector of Police is the person who laid the trap. What he has deposed, as found in paragraph 20 of the deposition, is that Shamsundar came and signaled to him, and soon himself and his staff

rushed to the second floor of Meghsagar Hotel and he got himself introduced to the accused by producing his identity as Inspector of Police and introduced the other members of the trap. According to him, accused was nervous when he introduced himself as inspector. Thereafter he is stated to have asked the accused the accused as to whether he had collected bribe from PW-2 to which accused is stated to have admitted of having received RS.20,000/- from PW-2. Then he is stated to have asked the accused to pay the bribe amount which he has received from PW-2 and later accused took out the currency notes from inside his banian and produced the same before him.

58. Shivaraj who is examined as PW-4 was working as LDC in Doordarshan Kendra. He has been examined by the prosecution to show he was working under Suryanarayan and his duty was to issue telecast certificate. According to him, he would prepare telecast certificate and it would be placed before the program executive for signature and if program executive would not be found, the same would be placed before the higher authorities. It is his case that Suryanarayan was working as program executive in Doordarshan Kendra and at his instance he had not prepared telecast certificate relating to the serial, Chalanachitra Vikshisi.

59. If we read the examination-in-chief portion of the evidence of PW-4, it appears as though the telecast certificate was expected to be issued either to PW-2 or the recognized agency for having telecast the serial and it was stopped only at the instance of accused- Suryanarayan and therefore, there was scope for demanding money. It is relevant to note his cross-examination. He has admitted Harish and Sridhar were also working as production assistants in Doordarshan Kendra during the relevant point of time. He has given explanation as to why he did not prepare the telecast certificate. In paragraph 8 of his deposition, PW-4 has specifically admitted that since the party, i.e. PW-2 had not paid telecast fee, accused had informed him not to prepare the certificate. While dealing with pint no.(l) elaborately, this court has specifically held that there was no scope for official favour to be done by the accused, unless he or his recognized agency had paid the requisite telecast fee and minimum guarantee fee. Therefore, the direction of the accused to PW-4 not to prepare telecast certificate cannot be found fault with. On the other hand, accused was duty bound not to issue the certificate unless the requisite amount was paid.

60. The cross-examination of PW-4 is also material to know as to whether the accused had gone to Meghsagar Hotel on being invited by PW-2, or for any other purpose at the invitation of others. In paragraph 7, PW-4 has deposed that the accused had no separate chamber during that point of time and therefore he was sitting in one room. Two days prior to the trap, Harish and Sridhar had come to the table of the accused and at that time, PW-2-Shamsundar was also near the table of the accused at that time. PW-4 has deposed that at that time accused received a telephone call and he replied to the person who had called him over phone that he would come to Meghsagar Hotel on the evening of 16.9.1997 and they could discuss about the drama. This phone call was received by the accused at 10.30 a.m. In the light of this material evidence of PW-4, the probability is that accused had not gone on the invitation of PW-2, but on the invitation of his friends who had called him to discuss about the drama in the said hotel. Therefore the possibility of PW-2 making use of this opportunity to get the trap laid cannot be considered as ill-founded.

61. In a catena of cases, the Hon'ble Supreme Court has considered about the presumption to be raised under Section 20 of the Act at length in innumerable cases and has unequivocally held that 'acceptance of bribe amount or possession of tainted money by the public servant must be preceded by demand and evidence has to be appreciated properly giving the benefit to the accused' It is held in the case of PUNJAB RAO .v. STATE OF MAHARASHTRA (2004 SCC 1130) that 'the explanation offered by the accused for possession of the alleged amount must be considered.' It is further clarified that 'if it is probable and if it is stated in Section 313, it has to be accepted and the benefit has to be given to him.'

62. In yet another decision reported in 2006 SCC (Cri.) 401 between T.SUBRAMANYAM .v. STATE OF TAMILNADU, it is made clear by the Hon'ble Apex Court that 'mere proof of receipt of money by the accused in the absence of proof of demand and acceptance of money as illegal gratification would not be sufficient to establish the guilt of the accused.

63. In the latest decision of the Hon'ble Supreme Court in the case of STATE OF PUNJAB .v. MURLI MOHANLAL VERMA (AIR 2013 SC 3368), many earlier decisions of the Apex Court have been referred to and once again reiterated that the demand of illegal gratification is a sine qua non constituting the offence under the P.C. Act and I chat in exceptional circumstances, the appellate court, for compelling reasons should not hesitate to reverse the judgment of acquittal passed by the court below if the findings so recorded by the court below are found to be perverse, that is, if the conclusions arrived at by the court below are contrary to the evidence on record, or if the court's entire approach with respect to dealing of evidence is found to be patently illegal leading to miscarriage of justice, or if the judgment is unreasonable and passed on an erroneous understanding of law and the facts of the case.' This observation is made in page 6 of the judgment and paragraph 7 at page 3371.

64. In the case of C.M.GIRISH BABU .v. C5I, COCHIN [(2009) 2 SCC (Cri.) 1], the Hon'ble Apex Court has held that 'in spite of recovery of money from the AGO, presumption under Section 20 of the Act cannot be raised automatically as greater burden lies on the State to prove demand and acceptance beyond reasonable doubt.'

65. In the case of STATE OF MAHARASHTRA .v. DHYANESHWAR [(2010) 2 SCC (Cri.) 385] and BANARASIDAS .v. STATE OF HARYANA [(2010) 2 SCC (Cri.) 864], the Hon'ble Apex Court has considered the provisions of Sections 101 and 102 of the Evidence Act and has held that 'before the accused is called upon to explain as to how the tainted money in question was found in his possession, the foundational facts must necessarily be established by the prosecution. It is made

clear that even while invoking Section 20, the court is required to consider the explanation offered by the accused if any, that too, on the touchstone of preponderance of probabilities, net insisting proof beyond, reasonable doubt which is the initial burden cast on the prosecution.'

66. Therefore, this court will have to see as to whether the trial court is justified in recording conviction against the accused. Whether acceptable evidence has been placed on record by PW-2 in regard to the date and time of payment of bribe in terms of Section 7 of the Act, will have to be examined. In trap cases, the complainant will be an interested witness, in the sense that he would be interested in trapping the accused who is stated to have not done what ought to have been done legally, according to him. The evidence of the complainant needs corroboration in material aspects and this should be corroborated by the shadow witness who would have accompanied him at the time of alleged demand and receipt of bait money by the accused.

67. Ex.P1 is the complaint said to have been lodged by Shamsundar on 16.9.1997 to the Superintendent of Police, CBI, and bears his signature. It is his case that in the first week of August 1997 accused demanded Rs.20,000/- in order to allow the serial to go uninterruptedly. Thereafter also on a few occasions, he is stated to have demanded him to pay bribe. A similar demand was made on 16.9.1997 at 10.00 a.m. and therefore he was constrained to file the complaint. Whether the oral evidence led by PW-2 really inspires the confidence of the court and whether evidence adduced by him in this case has been critically evaluated by the court below, is to be looked into.

68. In his examination-in-chief, PW-2 has deposed that he had requested the accused to give him a letter about what was agreed between himself and the director and also to issue a certificate for the episodes already telecast. He is stated to have demanded Rs.20,000/ -. The date on which such demand was made is not forthcoming in paragraph 2. In paragraph 3 he has deposed that he met CBI officials on 16.9.1997 and they asked him to give the complaint in writing. His examination-in-chief is very silent about the dates of which the demand was made. The contents of Ex.P1 will have to be corroborated in material particulars relating to the alleged demand. In the cross-examination done on 15.2.2000, PW-2 has deposed that one Srinivas was the director of Doordarshan Kendra and at his (i.e. PW-2) request he had convened a meeting and had drawn up a note and in order to give a copy of the said note, accused is stated to have demanded money. There is absolutely no evidence in regard to the meeting convened by the then director at the instance of PW-2 and proceedings being drawn. When that foundational material is not forthcoming, the

alleged demand appears to be not well-founded. He has further deposed that he met the accused 3-4 times for getting the letter and accused demanded bribe. Then he is stated to have met the director and told him that accused was not giving him the letter. If the accused had really demanded bribe to give a copy of the letter, nothing came in his way to have intimidated the same to the director that the accused was demanding money, as the director was the ultimate authority in Doordarshan Kendra,

69. PW-2 has specifically deposed that he did not tell him about the demand made by the accused for bribe and there was no hindrance for him to have brought it to the notice the Director. This evidence probablises the case of the accused and does not even remotely support the allegation that there was a demand.

70. CW2-Balachandran is examined as PW-1. He was stated to be present when the demand was made by the accused to PW-2 in Meghsagar Hotel and is said to have seen the accused receiving money thereafter from PW-2. He is also a witness to the entrustment mahazar said to have been drawn in CBI office before proceeding to Meghsagar Hotel. In his examination-in-chief, PW-1 has deposed that the tainted currency notes smeared with phenolphthalein powder by the police were put in one cover and the Inspector of Police gave the notes to CW1- Shamsundar who kept it in his right side pant pocket. The Inspector is said to have instructed CW1 that the said amount should be handed over to the accused only on demand being made. Later on all of them washed their hands. Even PW-2, in his examination-in-chief, has deposed that the police gave him currency notes after smearing it with phenolphthalein powder and he kept it in the right side pant pocket.

71. We will now have to see as to what PW3-trap laying officer has deposed. He has deposed in paragraph 13 of the examination-in-chief that he requested CW3- Ramnath to keep the powder-smeared currency notes in the right side pant pocket of PW-2 and accordingly, Ramnath kept it in the right side pant pocket of PW-2. The evidence of PW-1 and PW-2 with regard to the person keeping those tainted notes in his pocket is glaringly contradictory. If the version of PW-2 were to be accepted, tainted notes were given by the police to PW-2 and he kept them in his right side pant pocket. If the version of I.O. were to be accepted, CW-3 Ramnath kept the currency notes in the right side pant pocket of PW-2. This Ramnath is not examined.

72. When the complainant goes to a particular place to meet the accused before laying trap, the normal procedure is to send an independent witness with strict instructions to go along with the complainant to that place where the accused will be, and stand at a reasonable distance so as to overhear their conversation and to see what exactly transpires between them. The version of PW-1-Balachandran is that at 6.30 p.m. on 16.9.1997, himself, Ramnath, Shamsundar, Inspector and staff went near Meghsagar Hotel near Bhashyam Circle, Sadashivanagar, Bangalore. PW-1 has specifically deposed that CW1 went earlier to the said place and after a few minutes, himself and CW3-Ramnath followed CWI upto the second floor of the hotel. It is his case that CW 1 and accused-Suryanarayan were sitting inside the hotel and then himself and Ramnath sat opposite to their table diagonally and CW1 and accused were having some conversation between themselves. He is not sure as to what conversation took place. It is his case that his colleague, Ramnath slapped on his right leg and by the time he could turn around and see, the accused received the cover from CWI-Shamsundar. CWI is said to have gone down to the ground floor and within a few minutes, CBI officials came to the second floor and prepared sodium bicarbonate solution and asked the accused to dip his fingers in it, and accordingly he dipped his fingers in the solution which turned pink.

73. The normal procedure to be followed by the trap laying officer is to draw a rough sketch of the spot where trap will be laid at the earliest, that too, without any delay or at the time of recovery mahazar. That must be prepared immediately after the trap so as to show the exact position of the accused, complainant and other witnesses. In the present case, FW3-G.S.Kumar has not prepared any rough sketch of the scene of trap. If he had prepared it, he would have definitely spoken to that effect in his evidence. Even the evidence of PW-2-complainant is silent about drawing of rough sketch at the spot.

74. PW-2 has specifically deposed that there was nobody in the office when the accused demanded bribe for

the first time and he had in his mind to report it to CBI, but in paragraph 10, he has deposed that he did not tell the director that the accused had demanded bribe amount and he had refused to pay it. If the accused had really intended to demand bribe, he would not have allowed 15 episodes to be telecast uninterruptedly prior to 16.9.1997. When exactly he met the director is not forthcoming and director would have been the best witness.

75. PW-2 has deposed that he has stated before PW3- G.S.Kumar while giving complaint that the accused was demanding bribe for issuing telecast certificate and for releasing the letter which was approved by the director. He is said to have told Kumar who got it typed on his dictation, but nothing is forthcoming about this in the complaint marked as Ex.PI. PW-2 has admitted to that effect. He knew very well that these facts were very relevant and had to be mentioned, but they are not forthcoming in Ex.P1.

76. As already discussed earlier, the evidence of PW-2 is silent about Ramnath and Balachandran following him and sitting diagonally opposite to the place where himself and the accused had sat. Ex.P10 is the sketch said to have been prepared by the Assistant Engineer, Bangalore Central Sub-division, Central Public Works Department. Though it bears the signature of a person, the date of preparation of the same is not forthcoming. As per Ex.PIO, 'A' is the table where the trap was laid, 'D' and 'C' are tables where CBI officials waited in the second floor. Table 'C' is just opposite table 'A' and the distance is 1.3 mts. which would be about 5 feet in distance. Table 'B' is diagonally opposite to table 'A' and the distance is shown as 2.02 mts. and the distance would be about 7 feet. If Ramnath and Balachandran had sat in two separate tables as shown in Ex.PIO (got marked through PW7), Ramnath could not have slapped the thigh of Balachandran to show the accused allegedly receiving the cover of notes from PW-2, in view of such a distance between tables 'B' and 'C'. If the accused and PW-2 had sat in table 'A' opposite to each other, table 'C' would be behind PW-2 or the accused. The person sitting in table 'C' cannot see what was happening between the accused and PW-2 in table 'A'.

77. Admittedly Ramnath who is said to be an independent witness is not examined in the present case. Thus the location as shown in Ex.PIO seriously contradicts the oral version of PW-1 and PW- 2.

78. PW3-G.S.Kumar has not stated anything in his evidence about the rough sketch prepared either at the spot or in the office, immediately after the trap. He is stated to have given a brass seal which is marked as M.0.6 It is his case that he handed it over to Ramnath to produce the same before court when he would be summoned as witness. It is understandable as to how it could be produced and got marked as M.0.6 in the light of the Ramnath CW-3 being not summoned before court and not examined. Prosecution has not explained as to how the same could be produced without examining the person to whom it was entrusted with a specific direction to produce it before court on being summoned.

79. Prosecution has tried to impress upon the court that Ganesh Naik was present when the accused received money on demand. He is stated to be working as server in Meghsagar Hotel in September 1997. He has deposed that on 16.9.1997, CBI officials caught held of the accused in their hotel and himself and others were present. According to him, this accused was present when the CBI officials caught hold of the accused in the hotel. Admittedly he was examined almost after 4 years from the date of the trap. It is understandable how he could remember these facts when hundreds of people come everyday to such a big hotel. There is nothing on record to indicate that he was present in the second floor and he/had served accused and PW-2 some eatable. He has specifically deposed he did not see when the accused was caught hold of by CBI officials.

30. PW7-Pradeepkumar is the inspector who took over the case on 20.9.1997 after verifying the investigation that had already taken place. He examined Paneer Selvam from CBI and recorded his statement. On 15.10.1997, he recorded the statement of Lakshminarayan-CW8 and received site plan from CW13-Krishnakumar, Assistant Engineer Central PWD on 17.10.1997 and it is got marked through PW7. He recorded the statements of PW-1 -Balachandran and Ramnath on 22.10.1997 and examined Shamsundar on 7.11.1997. Ganesh Naik (PW5) was examined on 12.11.1997 who is said to be the server in Meghsagar Hotel at the

relevant point of time.

81. In criminal cases, statements of material witnesses have to be recorded without undue delay. The author of Ex.P10-Krishnakumar is not examined. Mere production of a document and getting it marked is not sufficient, and the same will have to be proved to corroborate the contents of the same. Who identified the second floor and the trap laying table and other two tables in order to enable Krishnakumar to prepare the sketch is not forthcoming. Either Ramnath or Balachandran or the inspector himself should have been present at the time of the alleged visit of Krishnakumar to the hotel to draft the sketch.

82. As rightly argued by the learned counsel for the appellant, much credence cannot be attached to Ex.PIO in the light of the author being not examined and the contents being glaringly contradictory to the oral version of PW-1 and PW-2. Therefore the evidence of Ganesh Naik is not of much consequence regarding the alleged demand said to have been made by the accused to PW2 in the hotel where he was working. Nothing is forthcoming from the evidence of the inspector as to what exactly was the reason for not recording the statement of material witnesses like Ramnath, Balachandran, Shamsundar, Ganesh Naik and Paneer Selvam either on the date of trap or immediately thereafter. Even after taking over the file for further investigation, PW7- Pradeepkumar did not examine material witnesses without undue delay. The importance of recording the statements of material witnesses without undue delay is to rule out the possibility of embellishment in prosecution case. Inordinate delay in recording the statements of witnesses and glaring inconsistencies in the version of material witnesses give scope for suspecting the bona fides of the nittigrities of the trap stated to have been laid by PW3.

83. PW7 has deposed that Ex.PIO is the site plan. The author of Ex.P10-Krishnakumar is said to have prepared it in the presence of himself and one trap member whose name has not been mentioned, accompanied him and showed the place to the engineer. It is his case that one of the members showed the place to the engineer and does not remember his name. If really PW7 and another trap member had gone to the hotel along with Krishnakumar, their names and signatures would have found place in Ex.PIO. He has further deposed that he has examined CW6-Bhaskar in respect of Exs.D1 and D2, but Bhaskar is not examined

before court. He could have spoken about the important formalities to be observed before issuing telecast certificate and the alleged meeting that took place between the director and PW-2.

84. In the case of PUNJAB RAO .v. STATE OF MAHARASHTRA (2004 SCC 1130), it is held that 'if the accused can establish his defence by preponderance of probabilities and if his explanation under Section 313, Cr.P.C is found to be reasonable, then it cannot be thrown away merely on the ground that he did not offer such explanation at the time when the amount was seized.' In the present case, the trap laying officer who laid the trap did not give opportunity to the accused to explain his stand. In fact he should have told the accused that he could have his say about the money received by him. Having not given an opportunity, it cannot be urged at this stage that the accused should have given explanation at the time when the amount was seized.

85. In the present case, accused has probablized the defence that he had no capacity to do any official favour, more particularly when PW-2 had not paid the requisite fee. It is forthcoming from the records that the facility granted to the recognized agency , Multi Channel was a credit facility and nothing is placed on record to show that it had paid the requisite amount on the basis of which PW-2 could insist for issuing the telecast certificate.

86. As already discussed, the evidence of PW-2 in regard to the demand made by the accused and receipt of money should have been corroborated in material particulars by an independent impartial witness. The evidence of PW-1 does not inspire the confidence in the mind of this court about receipt of money or demand. He has not spoken anything about the conversation that took place between the two. A doubt, therefore, arises as to whether PW-1 could really hear what transpired between PW-2 and the accused if he was really present.

87. This court had opportunity to see the number of notes recovered. There were 100 notes. The case of the prosecution is that the accused received the amount and kept it inside his banian, and later handed over to PW3. Looking to the volume of the notes, it would be highly improbable that one could keep a bundle of notes about 100 inside his banian as it would be apparently visible to anybody. The normal course for a person to keep them would be in the pant pocket which would not be very much visible. It is understandable as to why the shirt worn by the accused at the relevant point of time was not seized. Even if the accused had kept the amount inside his banian, it would have come into contact with the upper portion of the shirt near the collar and it would have had the impression of phenolphthalein powder.

88. In relation to the 91st question put to the accused during his examination under Section 313, Cr.P.C., he has answered that the inspector forced him to take it out and accordingly he did so. Answering the 17th question, he has denied the suggestion that he had admitted about receipt of money. In the detailed written statement, he has denied receipt of Rs.20,000/- and has submitted that said it was forced upon him and thrust into his banian. He has stated that he had worn a loose jean shirt which did not have top button and taking advantage of it, complainant thrust the money into his banian. If that jean shirt had been seized and produced before court, this court could have examined if thrusting of the amount was possible. It is not the case of prosecution that he had not worn the jean shirt on that day.

89. What is held in the case of VENKATASUBBARAO's Case (AIR 2007 SC 489) is that presumption under Section 20 of the Act cannot be drawn when demand by the accused has not been proved. Presumption under Section 20 is sought to be invoked in the present case by the learned counsel for CBI to show that accused had received the amount as motive or reward. Since accused had no role to play to issue telecast certificate without collecting the requisite fee, there cannot be any motive or reward.

90. The procedure to be followed in laying trap by the trap laying officer is to take the complainant along with a shadow witness and entrustment mahazar witness to the spot and to tell the shadow witness to stand at a reasonable distance and watch the movement and overhear their conversation. Complainant would be directed to pay the amount only after being demanded by the accused. After getting signal from the complainant, the I.O. should rush to the spot with entrustment panch and other police officials and catch hold of the hands of the accused and then ask the shadow witness as to what happened. On getting a complete account of what happened, he has to put questions to the complainant, and then he has to tsk his officials to prepare sodium bicarbonate solution and dip the fingers of the accused in it.

91. PW-1 has deposed that a few minutes later, he went to the second floor and by that time accused and PW-2 were sitting in one table, immediately PW-2 is said to have come back along with CBI officials to the second floor who prepared the solution and asked the accused to dip and accused did so.

92. PW-2 has deposed that accused was waiting there for his arrival and both of them sat opposite to each other and were talking. After some time, accused demanded bribe amount from him and he gave it. Accused is said to have received the amount with his right hand and put inside his banian. Admittedly it is not the case of the prosecution that accused had not worn any shirt over the banian. If he had worn a shirt or T-shirt, he should have used his left hand also to make space for putting the amount inside and in that process the shirt will also get the impression of phenolphthalein powder. It is his case that he came down and gave signal and the inspector along with his officials rushed to the second floor with him and asked accused whether he had received the bribe amount. The procedure to be adopted is to first take account from the shadow witness and then complainant and thereafter to ask the accused to produce the amount, if he had received. The evidence of PW-2 clearly goes to show that the accused was not asked to give his explanation in regard to the amount allegedly received by him.

93. PW3 has deposed that on receiving signal from PW-2, himself and other staff, i.e. Peneer Selvam and Lakshminarayan rushed to the second floor and PW-2 showed accused had accepted Rs.20,000/-. According to him, the independent witness sitting in the nearby table came there. According to him, at 7.15 p.m.,

complainant went inside the hotel. He instructed the independent witness to follow him and to take suitable positions in the hotel. What exactly was the interval between these two is not forthcoming. Admittedly PW-1 has stated that after 5 minutes he went there. On the very same day of the trap, the 1.0. must make record further statements of the complainant and other witnesses including Pancli witnesses, or at least on the next day. This has to be done in order to avoid embellishment in the prosecution case. He should send reports of seizure i.e., recovery mahazar to the special court without any undue delay. Admittedly in the present case, recovery mahazar, an important document marked as Ex.P3 is dated 16.9.1997 and is said to have been drawn in CBI Office, Bangalore, at 10.30 p.m. It bears the signature of Ramnath, complainant-Shamsundar, Balachandran, Paneer Selvam, G.S.Kumar and Lakshminarayan. It was sent to the special court on 20.9.1997 i.e. 3 Vo. days after the alleged recovery was made. No explanation as to the inordinate delay for submitting is forthcoming.

94. Thus the inordinate delay in recording the statements of material witnesses and submitting Ex.P3 after 3 V2 days gives rise to a serious doubt in the case of the prosecution and the initial burden cast on it to prove the case beyond all reasonable doubt has not been effectively discharged. Non-examination of Ramnath who is stated to have alerted PW-1 to see the accused receiving the amount from PW-2 is an adverse circumstance to the case of the prosecution. Since the offences punishable under the Prevention of Corruption Act are all grave in nature with serious consequences, a strict procedure contemplated in the trap process must be followed, failure of which would give the benefit of doubt, to the accused.

95. The case registered on the basis of complaint should be sent in a sealed cover to the special court immediately after registering it with a request to be opened only after the outcome of the trap is made known to the court. In the present case, it is sent openly and was received by the court endorsing the same. If the initial burden cast on the prosecution is not effectively discharged, it was not possible to raise a presumption under Section 20 of the Act. It is in this regard the decision of the Hon'ble Apex Court in the case of STATE OF MAHARASHTRA .v. DHYANESHWAR [(2010) 2 SCC (Cr.) 385] is pertinent. The concept of reversal of burden of proof has been discussed at length in the said decision while discussing Sections 7, 20 and 13(I)(d) of the P.C.Act. What is strongly reiterated is that 'if the accused is called upon to explain as to how the amount in question was found in his possession, foundational facts must be established by the prosecution.' It is further reiterated that 'even while invoking Section 20, the court is required to consider the explanation offered by the accused, if any, on the touchstone of preponderance of probabilities, and not on the touchstone of proof beyond reasonable doubt.'

96. While discussing the concept of reversal of burden of proof, it is reiterated that 'even in a case where burden is on the accused, prosecution is expected to prove foundational facts. If two views are possible, one in favour of the prosecution and the other in favour of the accused the latter would normally prevail.' The decision in the case of K.NARASIMHACHARY (2006 CrLL.J, 518 (SC) (supra) has also been considered in the above case.

97. In the present case, accused has specifically deposed that he was not the competent authority to issue telecast certificate and it is the director who could issue the certificate, that too only after the requisite fee was collected either from the sponsorer or the producer of the tele-serial. His official duty was not to recommend for issuing telecast certificate till it was paid. He was also not competent to issue copy of the note of the meeting held between PW-2 and the director since he is not the custodian of the said file. Even otherwise prosecution has not placed any material in regard to the alleged meeting held at the instance of PW-2 with the director. The evidence of PW-1 does not inspire any confidence in regard to demand or receipt of money by the accused.

98. Taking into consideration the totality of the circumstances, it can be held with certainty that the accused has been able to probablise his defence by effectively cross-examining material witnesses. The trial court's observation that he should have entered the witness box to probablise his defence, is incorrect and improper.

99. The presence of the accused in the hotel at that point of time is not found to be improper or improbable because he had already fixed appointment with his friends to discuss something in connection with a drama and this was overheard by PW-2. This is evident from the evidence of PW-4 who is none other than the official working in the same section where the accused was working. Learned special judge has ignored some of the important admissions culled out from the material -'fitnesses and has attached more importance to Section 20 of the Act without other being any acceptable evidence in regard to alleged demand and official favour that the accused could have done to PW-2 in order to demand bribe.

100. Though an official working in a Government department could be a shadow witness or endorsement Panch, the court will have to see whether the evidence of such witness is creditworthy to be relied upon. PW-2's version needs to be corroborated in material particulars and the same is lacking in material particulars. Just because at 6.45 p.m., his friends were not found in Meghsagar Hotel, it cannot be held that the accused went to the hotel only at the instance of PW-2. Learned judge has failed to take into consideration various inconsistencies in the prosecution case with reference to inordinate delay in recording the statements of witnesses and inordinate delay in lodging Ex.P3-recovery mahazar and non-proof of Ex.P10-sketch. Hence, points no.2 and 3 is answered in the negative.

101. In view of the findings on point nos.(1) to (3), absolute interference is called for and the appeal will have to be allowed in its entirety, Consequently the accused will have to be acquitted of the offences for which he has been charged by the trial court. Hence, I proceed to pass the following order:

ORDER

The appeal filed under Section 374(2), Cr.P.C. is allowed in entirety.

The judgment of conviction and sentence passed by the XXI Additional City and Civil Judge and special judge for CBI Cases, Bangalore, in Spl. C.C.57/98 are set aside.

Consequently the accused is acquitted of the offences alleged.

If the amount of fine has already been deposited by the appellant- accused, the same shall be returned to him after, the appeal period is over.

Bail bonds stand cancelled.

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