

Om Prakash vs.state

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Court : Delhi

Decided On : Sep-25-2017

Appellant : Om Prakash

Respondent : State

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: September 25, 2017 CRL.A. 32/2000 OM PRAKASH Appellant Through: Mr.C.Mohan Rao, Advocate with Mr.Lokesh Kumar Sharma and Mr.Devendra Kumar, Advocates. versus STATE Respondent Through: Ms.Kusum Dhalla, APP for the PRATIBHA RANI, J.

(Oral) State.

1. By the present appeal the appellant Om Prakash lays challenge to the judgment dated 21st December, 1999 convicting him for the offence punishable under Section 7 and 13(1)(d) of Prevention of Corruption Act, 1988 and order on sentence dated 23rd December, 1999 whereby he has been sentenced in the following manner:-

"(a) U/S7of PC Act : (b) U/S131)(d) of PC Act : CRL.A. No.32/2000 to undergo RI for six months and to pay a fine of 500/- and in default of payment of fine, to undergo SI for one month. to undergo RI for one year with fine of 500/- and in default of payment Page 1 of 21 of fine to undergo SI for one month.

2. In brief the prosecution case is that on 10th September, 1990 the complainant Babu Lal (PW-3) visited Anti Corruption Branch, Delhi and complained about the demand of `500 as illegal gratification from him by Om Prakash (appellant herein) or the jhuggi of the complainant would be demolished. The complainant tried to convince the accused that his jhuggi was constructed on a land measuring 50 yds. allotted to him by the Village Panchayat, Haiderpur but he insisted that if the complainant wanted to save his jhuggi he had to pay `500 to him. The complainant agreed to pay the bribe. The accused Om Prakash who was employed as Peon in Land Protection Branch in DDA informed that he would visit the complainant on 10th September, 1990 at about 1200 noon to receive the bribe money.

3. On the basis of the complaint Ex.PW-3/A made by the complainant, PW-3 Babu Lal, pre-trap proceedings were conducted after the public witnesses were arranged. Thereafter the raiding officer along with the complainant and panch witnesses left for the spot. The complainant was instructed to enter into conversation with the accused in such a manner that the panch witness could hear and also see the acceptance of bribe so as to give signal thereafter. At about 12:30 PM the accused Om Prakash visited the complainant and near the jhuggi of Babbu they started talking after shaking hand. While smoking bidi, Om Prakash demanded the money and the complainant took out 500 which had already been treated with phenolphthalein powder and gave it to appellant Om Prakash which he CRL.A. No.32/2000 Page 2 of 21 accepted in his left hand. The complainant again requested him not to demolish his jhuggi as he was a poor man and had also done sewa as asked by him. On receiving the signal the Raiding Officer reached there and after disclosing his identity asked the appellant whether he had received 500 as bribe but Om Prakash kept mum. He was found holding 500 in his left hand which was accepted by him as bribe. Thereafter the currency notes were recovered from the left hand of Om Prakash and numbers of the same tallied with the numbers noted in the pre-trap proceedings. Hand wash of the accused was taken and colour of the solution turned pink which was transferred into two bottles marked as LH-I and LH-II. The currency notes as well as the bottles containing hand wash solution were seized. Thereafter raid report was prepared and FIR was got registered. During investigation, samples of hand wash were sent to CFSL and sanction for prosecution of the accused was and obtained. After completion of

investigation, chargesheet was filed against the appellant for committing the offence punishable under Section 7 and 13 of Prevention of Corruption Act.

4. The appellant was charged for committing the offence punishable under Section 7 and 13 of Prevention of Corruption Act to which he pleaded not guilty. The prosecution has examined seven witnesses in all to prove its case. The appellant has also been examined under Section 313 Cr PC to enable him to explain the incriminating evidence appearing against him. During his examination under Section 313 Cr.P.C. the appellant/accused denied the entire case of the prosecution and stated that he was falsely arrested and implicated in this case by some unauthorized officials of CRL.A. No.32/2000 Page 3 of 21 the AC Branch. He has neither demanded nor accepted any bribe from the complainant. He also stated that the false FIR has been registered against him and that sanction is invalid.

5. After trial, the learned Special Judge held the appellant guilty for the offence punishable under Section 7 and 13(1)(d) of Prevention of Corruption Act and sentenced him in the manner stated above.

6. I have heard learned counsel for the appellant as well as learned APP for State and carefully gone through the record.

7. Submissions raised on behalf of the appellant are summarised as under: (i) The learned Special Judge has convicted the appellant on the uncorroborated testimony of the complainant ignoring the material contradictions in the statement of the witnesses. The prosecution failed to examine panch witnesses. (ii) The prosecution deliberately chose not to examine the independent witnesses. (iii) The appellant was working only as peon with DDA who was not even in a position to pass any order about demolition of the jhuggi or stay the demolition. (iv) There is material contradictions in the testimony of the PW-3 complainant and PW-5 the Raiding Officer as to where the transaction has taken place i.e. inside the jhuggi or near the jhuggi of one Babbu. (v) PW-3 and PW-5 have not stated about the position of panch witness Rajender Prasad from where he observed the transaction and gave signal. CRL.A. No.32/2000 Page 4 of 21 (vi) If the transaction was inside the jhuggi the panch witness had no occasion to see the

transaction and give the signal. (vii) There is also contradiction about the sequence of the events. PW-3 complainant stated that after entering his jhuggi the accused after shaking hand with him sat on a cot and was offered a bidi by the complainant. After smoking bidi the appellant demanded bribe in presence of Prabhu Dayal (not cited as witness) and accepted the money. (viii) PW-5 the Raiding Officer did not state about the presence of Prabhu Dayal or the appellant smoking the bidi. (ix) As per PW-3 the complainant when the Raiding Officer confronted the appellant about bribe money, he stated that it was voluntarily given by PW-3 but the version of PW-5 the Raiding Officer is that the appellant did not say anything and was stunned and shocked. (x) In the light of material contradictions in the testimony of PW-3 and PW-5, the sole testimony of the complainant PW-3 was not sufficient to base conviction as it was not inspiring confidence. (xi) Although in the complaint it was specifically mentioned that one Bhardwaj, J.E. was also involved but JE was given clean chit and the appellant who was only a peon having no power to demolish the jhuggi, had been falsely implicated.

8. Learned counsel for the appellant relied upon *Gulam Mahmood A. Malek vs. State of Gujrat & Meena vs. State of Maharashtra* (2000) 5 SCC21 in support of his submissions. CRL.A. No.32/2000 Page 5 of 21 9. On behalf of the State while supporting the reasoning given by the Special Judge it was contended that it was a case where demand and acceptance of bribe by the appellant from the complainant PW-3 has been duly proved. The complainant had absolutely no motive to make a false complaint against the appellant. It has also been contended that minor contradictions in the testimony of PW-3 complainant and PW-5 the Raiding Officer are not on material aspects hence cannot be a ground to discard their otherwise credit worthy version about the incident. The treated GC notice handed over to the complainant were recovered from the possession of the appellant when a trap was laid and on failure of the appellant to rebute the presumption, learned Trial Court has rightly convicted the appellant for demanding and accepting a bribe of Rs.500. It was also held that investigation in this case has been conducted by the officers of the rank of inspector who was duly authorized to conduct the same.

10. Learned Special Judge relied upon the decision in Harnek Singh 1998 (3) CC Cases (HC) 418 wherein on considering a similar notifications or orders, Hon'ble High Court of Punjab and Haryana was of the view that the investigation conducted by the Inspectors of Punjab Police on the basis of such orders, under the old Act, 1947 was saved in view of the provisions contained in Section 30(2) of the New Act and in view of the provisions of Section 6 of the General Clauses Act. It was also held that witness Rajender Prasad could not be examined as he was not traceable.

11. Learned Special Judge examined the evidence to answer the following questions: CRL.A. No.32/2000 Page 6 of 21 (i) Whether the testimony of PW-3 Babu Lal and PW- 5 Abhey Ram Inspector can be acted upon or needs further corroboration to be acted upon?. (ii) Whether presumption u/s 20 of the POC Act can be drawn against the accused?. (iii) Whether investigation suffers from any illegality or any prejudice has been caused to the accused?. (iv) Whether the sanction to prosecute the case is illegal or suffers from any illegality?. (v) Whether the prosecution has proved its case. 12. Learned Special Judge held that the non-examination of Prabhu Dayal by the prosecution has no negative effect on the testimony of the complainant PW-3 and merely because the JE Bhardwaj whose name figured in the complaint has not been prosecuted, is also not fatal.

13. With a view to appreciate the rival contentions, it is necessary to refer to the testimony of witnesses examined by the prosecution to prove its case.

14. PW-1 Sh.K.P.Singh, ACP, Anti Corruption Branch has deposed about the samples of handwash being deposited by Inspector Tola Ram (PW-6) on 10th September, 1990 sealed with the seal of TRM which was kept by him under his lock and key and on 11th September, 1990 the samples were taken out of the almirah and sent to CFSL for examination.

15. PW-2 Sh.Mehar Chand Yadav, Ex-Pradhan of Village Haiderpur Gaon Sabha was produced to prove that under 20 Point Programme, Plot No.41, half Biswa in Khasra No.12 was given to CRL.A. No.32/2000 Page 7 of 21 Babu Lal - the complainant. Further examination of this witness was deferred as the record from BDO office was not produced and thereafter his examination remained incomplete.

16. PW-4 Sh. Harchandi Singh, Dy. Director, Land Protection Branch, DDA proved the attendance register Ex.PW4/A wherein on 10th September, 1990 i.e. on the date of occurrence, PW-4 had put cross X in the column of Om Prakash to denote his absence as he had not come to the office on that date. This witness has not been cross examined and his statement to that extent has remained unchallenged.

17. PW-6 Inspector Tola Ram Mirwami was handed over investigation at about 2.30 pm after the raid. He prepared the site plan, recorded the supplementary statement of the complainant and panch witness. He arrested the accused, conducted his personal search, seized the allotment order Ex.PW3/F from the complainant and also deposited the bottles containing handwash and personal search of the accused. He also sent the bottles containing handwash to CFSL and obtained the result. He also seized the attendance register. After obtaining sanction Ex.PW6/D (admitted document) filed the challan. During his cross examination, about the Junior Engineer Mr. Bhardwaj, PW-6 has stated that he had been transferred on 3rd September, 1990 i.e. prior to the raid. On being questioned about the presence of Sh. Prabhu Dayal - the chance witness along with the complainant at the time of raid, he stated that he did not find any such person at the spot. CRL.A. No.32/2000 Page 8 of 21 18. PW-7 Sh. B.L. Makhija, Dy. Director (Personnel), DDA has been examined to prove that Sh. C. Norohna, Vice Chairman, who accorded the sanction Ex.PW6/D for prosecution of the appellant/accused, has retired and that the sanction order Ex.PW6/D bears the signature of Mr. C. Norohna at point-A.

19. The two material witnesses are PW-3 Sh. Babu Lal - the complainant and PW-5 Inspector Abhey Ram, the raid officer from Anti Corruption Branch.

20. PW-3 Sh. Babu Lal - the complainant has stated that he was allotted a plot measuring 50 sq.yds. from Gaon Sabha of the Village on which he constructed a jhuggi. About 4-5 days prior to the raid, Om Prakash who was working in DDA (appellant herein) came to him and said that this jhuggi was unauthorized and would be demolished. He demanded 500/- for not demolishing his jhuggi. Despite being shown the allotment slip, Om Prakash insisted for payment of 500/- to him to save the jhuggi and told that he would be coming on 10th September, 1990 at

about 11.00 am/12.00 noon. Since PW-3 was not willing to pay the bribe, he lodged the complaint Ex.PW3/A with the police and also gave five currency notes of 100 denomination each. Pre-trap proceedings were conducted vide Ex.PW3/B in the presence of panch witness Rajender Prasad and thereafter the raiding team proceeded towards his house. He was instructed to pay the bribe amount only on demand. The vehicle was parked on the main road of the village. He alongwith panch witness came inside the house whereas other members of the raiding team took position nearby. CRL.A. No.32/2000 Page 9 of 21 21. PW-3 Sh.Babu Lal - the complainant has further stated that at about 12.30 pm the accused Om Prakash came to his jhuggi and shook hand with him. PW-3 offered him a bidi which he smoked. Thereafter he asked for money which PW-3 gave and accepted by the accused in his left hand. When PW-3 Babu Lal asked whether is jhuggi would be demolished, he was assured by the accused that it would not be demolished now. The panch witness gave the signal and the raid officer reached the spot. The raid officer challenged the accused that he had accepted 500/- as bribe to which the accused responded that it was given voluntarily by him (Babu Lal). Thereafter the currency notes were recovered from the left hand of the accused and numbers of the same were tallied with the numbers noted in the pre-trap proceedings. Hand wash of left hand of the accused was taken and colour of the solution turned pink which was transferred into two bottles. The currency notes Ex.P1 to P5 were seized vide memo PW3/C and bottles Ex.P6 and P7 were also seized vide memo Ex.PW3/D. The post-raid proceedings were also recorded.

22. During his cross examination, P-3 Sh.Babu Lal has stated that when the accused came to his jhuggi, Prabhu Dayal was also there sitting on a cot on which the accused also sat and shook hand with him and also with Prabhu Dayal. The money was demanded by giving signal with hand and was accepted by him. PW-3 has denied the suggestion that no money was accepted by the accused inside the jhuggi nor the accused was apprehended inside the jhuggi and that no talk had taken place between him and the accused nor handwash of the accused was taken. CRL.A. No.32/2000 Page 10 of 21 23. PW-5 Inspector Abhey Ram of Anti Corruption Branch has stated that on receiving the complaint Ex.PW3/A in the presence of panch witness Sh.Rajender Prasad, pre-trap proceedings were conducted and thereafter trap was laid. On reaching the spot, the complainant and

panch witness were sent ahead to the jhuggi of the complainant and remaining members took position outside. At about 12.35 pm on receipt of signal from the panch witness, he reached the spot and disclosed his identity to the accused and challenged him that he (appellant Om Prakash) had accepted 500/- as bribe. The appellant got stunned and kept mum. Thereafter the currency notes were recovered from the left hand of the accused and numbers of the same tallied with the numbers noted in the pre-trap proceedings. Hand wash of left hand of the accused was taken and colour of the solution turned pink which was transferred into two bottles marked as LH-I and LH-II. The currency notes Ex.P1 to P5 were seized vide memo PW3/C and bottles Ex.P6 and P7 were also seized vide memo Ex.PW3/D. Thereafter he prepared the raid report Ex.PW3/H on which he made his endorsement Ex.PW5/A and sent the same to the Anti Corruption Branch on the basis of which FIR Ex.PW5/B was recorded. After registration of the case, investigation was handed over to Inspector Tola Ram Mirwani.

24. During his cross examination by learned counsel for the accused/appellant, PW-5 Inspector Abhey Ram stated that he did not met any person by the name Prabhu Dayal nor the complainant has mentioned the name of Prabhu Dayal in his statement. About smoking of bidi, he came to know from the complainant. He denied CRL.A. No.32/2000 Page 11 of 21 that bottles were filled in the Anti Corruption Branch with his (PW-5) handwash and no handwash of the accused was taken or that he did not conducted any raid proceedings.

25. In the instant case, the factum of appellant Om Prakash being a public servant and the validity of sanction Ex.PW6/D cannot be disputed rather the sanction has been admitted. The contradictions referred to by learned counsel for the appellant are on the issue, whether the bribe was paid inside the jhuggi of the complainant or outside his jhuggi. The site plan Ex.PW6/A shows the position of the complainant, panch witness as well of the raiding party. It is necessary to mention here that the complainant had appeared as witness after almost seven years of the occurrence and after lapse of such a long time, the witness is not expected to remember all minute details as if having a photographic memory.

26. In the case *Bharuda Broginbhai Harjibhai vs. State of Gujrat* AIR 1983 SC753 it was held that discrepancies which do not go to the root of the matter and shake the basic version of the prosecution should not be attached undue importance. Their Lordships have enumerated following reasons for arriving at this conclusion :-

"By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

2) Ordinarily, it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. CRL.A. No.32/2000 Page 12 of 21 Thus mental faculties, therefore, cannot be expected to be attuned to absorb the details.

3) The powers of observance differ from person to person, what one may notice, another may not. An object or movement might emboss image on one person's mind, whereas it might go unnoticed on the part of another.

4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

5) In regard to exact time of an incident or the time duration of an occurrence, usually, people make their estimates by guess-work at spur of moment, at the time of interrogation and one cannot expect people make very precise or reliable estimates in such matters. Again, it depends upon the time-sense of individuals which varies from person to person.

6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

7) A witness though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of

nervousness mix-up facts, get confused regarding sequence of events, or fill up details of imagination at the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved, though the witness is giving a truthful and honest account of the occurrence witnessed by him, perhaps it is a sort of psychological moment. CRL.A. No.32/2000 Page 13 of 21 27. The statement of PW-3 Sh.Babu Lal - the complainant on the material aspect of the case i.e. initial demand of 500/- by the appellant Om Prakash for not demolishing the jhuggi about 3-4 days prior to the trap and his complaint to the Anti Corruption Branch on 10th September, 1990 when appellant Om Prakash was expected to visit the complainant to receive the bribe amount has been proved from the complaint Ex.PW3/A.

28. So far as, non-examination of panch witness Sh.Rajender Prasad is concerned, on the summons sent to the witness for the date 14th March, 1996 it was reported that he had shifted to Andhra Pradesh and his whereabouts were not known. Thereafter also, repeatedly summons were sent to the panch witness Sh.Rajender Prasad which were received back unserved as his whereabouts could not be ascertained. On the summons sent to Sh.Rajender Prasad for the date of hearing 16th July, 1997, it was reported that Sh.Rajender Prasad was working with the said department earlier and he had left the job and shifted to Guntur, Andhra Pradesh and his present whereabouts were not known.

29. In view of the decision of the Supreme Court reported as State of A.P. vs. P. Satyanarayana Murthy (2008) 9 SCC674 non-examination of panch witness Sh.Rajender Prasad is not fatal to the prosecution case.

30. Lot of emphasis has been laid on non-examination of chance witness Prabhu Dayal. The raid officer PW-5 Inspector Abhey Ram and the investigating officer PW-6 Inspector Tola Ram Mirwani have not stated about the presence of chance witness Prabhu Dayal at the CRL.A. No.32/2000 Page 14 of 21 time of raid. The complainant has stated about the presence of Prabhu Dayal only during his cross examination. However, he has nowhere stated that when the raid officer challenged the appellant Om Prakash that he had accepted the bribe, Prabhu Dayal was present even at that time. So even if it is assumed for the sake of

arguments that some person with the name Prabhu Dayal was present when accused/appellant visited the complainant, he being not found present when the accused was challenged by the raid officer, there was no occasion for them to join the so called chance witness.

31. No doubt, there are some contradictions in the testimony of PW-3 Sh.Babu Lal - the complainant and the raid officer as to the exact place where the bribe was paid i.e. whether inside the jhuggi of the complainant or near the jhuggi of one Babbu. In the site plan Ex.PW6/A, in the marginal notes it is mentioned that there is hardly any gap between the points A, B and C which are near the jhuggi of Babbu and the position of the raiding team was at point-D. As already noted, since PW-3 Sh.Babu Lal - the complainant has been examined after lapse of almost seven year, this contradiction cannot be termed as material so as to throw the otherwise proved case of the prosecution.

32. Similarly, the sequence of events as narrated by the complainant pertained to the exchange of pleasantries and offering bidi to appellant to smoke are not on vital aspects. The main event i.e. visit by the appellant Om Prakash to the jhuggi of the complainant and demand of 500/- from him, after accepting bribe amount assuring him that his jhuggi would not be demolished and thereafter on getting the signal post-trap proceedings being conducted at the spot by the raid officer CRL.A. No.32/2000 Page 15 of 21 and the investigating officer proved the prosecution case beyond any reasonable doubt. The purpose of the visit of the appellant Om Prakash to the jhuggi of the complainant was not that they were having any friendly relations but to receive the bribe amount already demanded by him three-four days prior thereto.

33. Undisputedly, the appellant/accused was working as Peon in DDA. As per the statement of PW-4 Sh. Harjchandi Singh, who was working in DDA as Dy.Director, Land Protection Branch, DDA the appellant Om Prakash was working as peon in the said branch and he was entrusted the work of service of notices of unauthorized construction in the area of North Delhi including the area of Shalimar Bagh. The appellant used to go for service of notices straightaway in the morning and after that he used to come to the office in the afternoon. When the

appellant/accused was arrested, no notice was recovered from his possession to prove his presence there for service of notices in that area where jhuggi of the complainant was situated.

34. The appellant/accused has failed to give any reasons explaining his presence at the jhuggi of the complainant at the time of raid. PW-4 Sh.Harchandi Singh has also proved the attendance register Ex.PW4/A wherein in the column of attendance against his name, he had to put cross X as appellant failed to report for duty on that date. He was having no enmity either with the complainant Sh.Babu Lal or with the raid officer which could be a reason for them to implicate him in this case. Merely because the panch witness has remained unexamined for the reason he was not traceable despite summons being sent to him numerous times, that itself is no ground to discard the otherwise CRL.A. No.32/2000 Page 16 of 21 creditworthy testimony of PW-3 Sh.Babu Lal - the complainant which is corroborated by the raid officer PW-5. Thus, the unauthorized construction, if any, in the area where he was deputed to serve the notices could be reported by him so as to be acted upon to initiate demolition proceedings.

35. The statement of the complainant that after receiving 500 he was assured by the appellant that his jhuggi will not be demolished further proved that the appellant was in a position to cause harm to the complainant by reporting the alleged unauthorized construction and then serve the notice issued in that regard.

36. The statement of the complainant as well in the complaint Ex.PW-3/A it is specifically mentioned that it was the appellant who demanded 500 bribe for not demolishing the jhuggi of the complainant.

37. PW-5 Insp. Abhay has deposed about receipt of complaint Ex.PW0-3/A and pre-trap proceedings were conducted on receiving the complaint. He also stated about the trap being laid and position being taken by him with other staff near the jhuggi and thereafter with respect to the post-trap proceedings conducted after receiving the signal from the panch witnesses. It would be thus evident from the statement of the complainant which has been duly corroborated by PW-5, trap laying officer (Raiding Officer) that the appellant had visited the jhuggi of the complainant to receive the bribe of 500 demanded by him about 4-5 days prior

thereto by extending threat that otherwise his jhuggi would be demolished. The only plea taken by the appellant during cross-examination of the material prosecution CRL.A. No.32/2000 Page 17 of 21 witnesses to the trap and the post-trap proceedings is about his false implication but without giving any reason for his false implication by the complainant who was totally stranger to him except that he constructed a jhuggi on a plot which he claimed that it was allotted to him by the Village Panchayat. Just to save his jhuggi he agreed to pay 500 to the appellant but at the same time made the complaint also to the anti-corruption Branch and got him trapped.

38. The contention raised on behalf of the appellant that he was not in a position to show any favour or dis favour to the accused in connection with his official duties needs to be rejected in view of the decision of the Supreme Court reported as Chaturdas Bhagwandas Patel vs. The State of Gujarat AIR 1976 SC1497 observing as under: this demand for payment and 20. Secondly, acceptance of the money by the appellant on the 12th July had to be appreciated in the context of the representation made by the appellant on the preceding day, to the effect, that if Ghansham sinh would not pay the gratification, he would be arrested, handcuffed and paraded for the offence of abducting Bai Sati.

21. The proof of the foregoing facts was sufficient to establish the charge under Section 161, Penal Code. The mere fact that no case of abduction or of any other offence had been registered against Ghan shamsinh in the Police Station or that no complaint had been made against him to the police by any person in respect of the commission of an offence, could not take the act of the appellant in demanding and accepting the gratification from Ghanshamsinh, out of the mischief of Section 161, Penal Code. The section does not require that the public servant must, in fact, be in a position to do the official act, favour or service at the time of the demand CRL.A. No.32/2000 Page 18 of 21 if it is clear from the the public servant receiving or receipt of the gratification. To constitute an offence under this section, it is enough if the public servant who accepts the gratification, takes it by inducing a belief or by holding out that he would render assistance to the giver "with any other public servant" and the giver gives the gratification under that belief. It is further immaterial the gratification does not intend to do the official act, favour or

forbearance which he holds himself out as capable of doing. This last Explanation appended to Section 161, according to which, a person who receives a gratification as a motive for doing what he does not intend to do, as a reward for doing what he has not done, comes within the purview of the words "a motive or reward for doing."

The point is further clarified by Illustration (c) under this section. Thus, even if it is assumed that the representation made by the appellant regarding the charge of abduction of Bai Sati against Ghanshamsingh was, in fact, false, this will not enable him to get out of the tentacles of Section 161, although the same act of the appellant may amount to the offence of cheating, also. (see Mahesh Prasad v. State of U. P., MANU/SC/0045/19

1955 CriLJ249 ; Dhaneshwar Narain Saxena v. Delhi Admn. MANU/SC/0135/19

(1962)ILLJ142SC .

22. Indeed, when a public servant, being a police officer, is charged under Section 161, Penal Code and it is alleged that the illegal gratification was taken by him for doing or procuring an official act, the question whether there was any offence against the giver of the gratification which the accused could have investigated or not, is not material for that purpose. If he has used his official position to extract illegal gratification, the requirement of the law is satisfied. It is not necessary in such a case for the Court to consider whether or not the public servant was capable of doing or intended to do any official act of (see favour or disfavour CRL.A. No.32/2000 Page 19 of 21 Bhanuprasad Hariprasad v. State of Gujarat :

1968. riLJ1505 and Shiv Raj Singh v. Delhi Administration MANU/SC/0340/19

1969 CriLJ1 . 39. The appellant in his statement under Section 313 Cr.P.C. has not come out with any explanation about his presence at the jhuggi of the complainant during duty hours. He had not applied for leave on that date and in the attendance register cross (X) has been marked against his name.

40. In view of the aforesaid discussion, the conviction of the appellant for committing the offence punishable under Section 7 and 13(1)(d) of PC Act is

upheld.

41. So far as the prayer of the appellant on the quantum of sentence is concerned, it has been submitted that the case pertains to the year 1990 and more than 27 years have passed and thereafter he has no other involvement, hence the substantive sentence of one year awarded to him for committing the offence under Section 13(1)(d) of PC Act may be reduced.

42. Taking into consideration that the case pertains to the year 1990 and this appeal is also pending for last seventeen years, while maintaining the sentence awarded to the appellant for committing the offence punishable under Section 7 of PC Act, the substantive sentence awarded to the appellant for committing the offence punishable under Section 13(1)(d) of PC Act is reduced from one year to six month. However, the sentence of fine is maintained.

43. Both the sentences i.e. sentence awarded for committing the offence punishable under Section 7 of PC Act and for committing the CRL.A. No.32/2000 Page 20 of 21 offence punishable under Section 13(1)(d) of PC Act shall run concurrently.

44. The appeal stands disposed of in above terms.

45. Appellant is directed to surrender before the concerned Jail Superintendent on 3rd October, 2017 at 10.00 am.

46. LCR be sent back alongwith copy of this order.

47. A copy of this order be sent to the concerned Jail Superintendent for information and compliance and be also given dasti to the appellant under the signature of Court Master. PRATIBHA RANI (JUDGE) SEPTEMBER25 2017 st/hkaur CRL.A. No.32/2000 Page 21 of 21

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