

State vs.prempal & Ors

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Court : Delhi

Decided On : Feb-13-2018

Appellant : State

Respondent : Prempal & Ors

Judgement :

\$~ * % Judgment reserved on:

08. 02.2018 Judgment delivered on:13.02.2018 Appellant Through Ms.Neelam Sharma, APP for State with SI Bhoop Singh from Anti- Corruption Branch. versus + CRL.A. 93/2012 STATE IN THE HIGH COURT OF DELHI AT NEW DELHI PREMPAL & ORS

... RESPONDENTS

Through Mr.Sunil Kumar, Advocate for R-1. Mr.Anurag Jain, Advocate for R-2 and R-3. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 This appeal has been filed against the judgment dated 17.12.2009 wherein the Court of Special Judge (PC Act) had acquitted the three respondents. The aforementioned three respondents had been charged for the offence under Section 7 and Section 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the P.C.Act). CRL A. 93/2012 Page 1 of 23 2 The version of the prosecution is that respondent no.1 Prem Pal on the asking of

respondent nos.2 and 3 (Ved Prakash and Suresh Kumar Kaushik) had accepted the bribe money of Rs.900/- from the complainant Shyam Sunder Kohli. This was pursuant to a raid having been organized by the appellant on the complaint of the complainant. The allegation was that on 11.5.2001 at 2.45 p.m. Prem Pal (who was working as a safai karamchari in the NDMC) came to the restaurant of the complainant at Connaught Place wherein he had collected the bribe amount of Rs.900/- from the complainant and this was on the asking and at the behest of respondent no.2 and 3 i.e. Ved Prakash and Suresh Kumar Kaushik (working as sanitary inspectors in the NDMC). The accused Prem Pal was apprehended at the spot. His handwash which had been obtained was sent to FSL, Malviya Nagar who vide its report dated 20.6.2001 (Ex.PW-4/B) had opined that the handwash of the accused Prem Pal gave a positive result of handling phenolphthalein coated GC notes. This report was positive and in favour of the prosecution. 3 The prosecution in support of its case had examined 13 witnesses of whom the star witness was PW-3 (B.P.Dutta) who was the Panch Witness. The complainant Shyam Sunder Kohli had died by then; he could not come into the witness box and thus could not prove the complaint. The TLO CRL A. 93/2012 Page 2 of 23 Inspector M.A.Salam was examined as PW-5. PW-4 was also a member of the raiding party. The other witnesses examined by the prosecution were largely formal; relating to the sanctions which had been accorded qua respondent nos.1, 2 and 3 by their employers. 4 In the statement of the accused recorded under Section 313 Cr.P.C. they had pleaded innocence stating that they had been falsely implicated. No evidence was led in defence. 5 The Trial Judge after examining the entire gamut of evidence both oral and documentary had come to a conclusion that the prosecution has failed to prove its case. Demand which an essential ingredient of Sections 7 and 13(1)(d) of the P.C.Act had not been proved. The complainant had not come into the witness box; this had weighed in the mind of the Trial Court noting that the contents of the complaint could not be proved; a mere recovery of the GC notes from respondent no.1 (Prem Pal) would not be sufficient to hold all the three respondents liable for the offence for which they had been charged. Testimony of PW3 had also been discarded. The accused accordingly stood acquitted. 6 The State has filed an appeal. On behalf of the prosecution, it has been argued that the testimony of PW-3 and PW-5 has not

been appreciated CRL A. 93/2012 Page 3 of 23 in the correct perspective. Merely because the complainant could not come into the witness box would not by itself lead to an acquittal. The demand of the complainant was implicit in the testimony of PW-3 who was an eye- witness to the entire incident and had in fact witnessed the money being paid on the demand of Prem Pal which had been accepted by Prem Pal and this acceptance was at the behest of Ved Prakash and Suresh Kumar Kaushik; it was for their benefit. The evidence not having been examined in the correct perspective, this is a fit case where the judgment of the Trial Court needs to be reversed and the accused persons are liable to be convicted. 7 On behalf of respondent no.1, it is pointed out that the demand is missing and this fact has been correctly appreciated by the Trial Court. Reliance has been place upon a judgment of the Bench of the Madhya Pradesh High Court reported as 2007 Cri L.J.

1329 Kailash & Ors. Vs. State of M.P. This is to substantiate the submission that in the absence of a clear demand a conviction under Sections 7 and 13(1) (d) of the PC Act is not called for. For the same proposition reliance has been placed upon a judgment of the Apex Court reported as 2015[2]. JCC1322C.Sukumaran Vs. State of Kerala. It has additionally been argued that the principles relating to interference by the High Courts in appeal against acquittal are well settled. CRL A. 93/2012 Page 4 of 23 The High Courts will not interfere with an acquittal order of the Trial Court unless there are strong reasons based on cogent reasons which can dislodge the finding arrived at by the Trial Court and for this proposition reliance has been placed upon a judgment of the Apex Court reported as 2008[1]. JCC542Sambhaji Hindurao Deshmukh & Ors. Vs. State of Maharashtra. The impugned judgment suffers from no infirmity. 8 On behalf of respondent nos.2 and 3 the same argument has been reiterated. Attention has been drawn to the various portions of testimony of PW-3 wherein in one part of his cross-examination he had admitted that he could not vouchsafe the correctness of the contents of the complaint (Ex.PW-3/A). It is pointed out that even otherwise the complaint (Ex.PW-3/A) is not a substantive piece of evidence. Reliance has been placed upon a judgment of this Court reported as 2011(1) JCC102Roshan Lal Saini Vs. Central Bureau of Investigation to support this submission. 9 Arguments have been heard. Record has been perused. 10 The star witness of the prosecution is

PW-3. He was the Panch Witness. He had deposed that on 11.5.2001 he was posted as Head Clerk in the Directorate of Education. He was asked to appear as a Panch Witness by CRL A. 93/2012 Page 5 of 23 the Anti Corruption Branch. He reached the spot at 11.00 a.m. He was accompanied by the complainant Shyam Sunder Kohli. The complaint (Ex.PW-3/A) recorded of the complainant was signed by him at point A. The complaint was made by Shyam Sunder Kohli regarding the demand of bribe by Sanitary Inspector Ved Prakash and Health Inspector Suresh Kumar Kaushik of the NDMC. The complainant had brought 9 GC notes in the denomination of Rs.100/- each. He gave those 9 GC notes to the Raid Officer who recorded the serial number of those GC notes in the pre-raid proceedings. Phenolphthalein powder was put on these notes. The notes were then touched by PW-3 as a demonstration in the pre-raid proceedings and when his hands were dipped into a solution, it turned pink. The Raid Officer (PW-5) had instructed PW-3 to remain close to the complainant and to overhear the conversation between the complainant and the accused; after the transaction was complete PW-3 had been instructed to give a signal to the raiding party. At about 12.00 noon the raiding party left the Anti Corruption Branch. The members of the raiding party took their position. At 2.45 p.m. Safai Karamchari Prem Pal came and sat near the complainant. The accused Prem Pal (correctly identified) told the complainant that Inspectors Ved Prakash and Suresh Kumar had sent him to collect the CRL A. 93/2012 Page 6 of 23 amount of Rs.900/- which the complainant took out and gave to Prem Pal who after counting the same kept it in his fist. The predetermined signal was given by PW-3. Accused Prem Pal was apprehended. The hand wash of Prem Pal was taken; the notes were seized. The hand wash was also seized and kept in an air tight bottle; seals and signatures were appended on that bottle. PW-3 was subjected to a lengthy cross-examination. He admitted that the serial numbers of the notes which had been recovered were tallied with the serial number mentioned in the pre-raid report Ex.PW-3/B and these serial numbers tallied with one another. The case property i.e. seized notes were identified. He admitted that his statement Ex.PW-4/F had been recorded by the police. In Ex.PW-4/F he had stated that at about 2.45 p.m. a Safai Karamchari, Prem Pal came and sat near the complainant and told the complainant that Inspector Ved Prakash and Suresh Kumar had sent him to collect the amount of

Rs.900/- and the complainant took out the money and gave it in the hands of Prem Pal who counted the same and kept the same in his fist. This exact version however did not find mention in Ex.PW-4/F. What had been stated in Ex.PW-4/F is that Prem Pal had sat near the complainant and the complainant had handed over Rs.900/- to Prem Pal in his presence. Vehement submission of the learned counsel for the accused CRL A. 93/2012 Page 7 of 23 Prem Pal being that this part of deposition of PW-3 is a substantial improvement given in his version in Ex.PW-4/F. This argument shall be answered later on. In a further part of the cross-examination PW-3 had stated that Ex.PW-3/A was recorded at 11.15 a.m. in his presence. This complaint was in the handwriting of PW-5. The complaint had been signed by PW-3 as also the complainant in his presence. PW-3 had entered the restaurant/spot at about 12.30 p.m. accompanied by the complainant. He was sitting at a few paces away from the complainant. He reiterated that Prem Pal had come to the spot at about 2.45 p.m. His statement was recorded in the restaurant after the raid had been completed. The complaint was reduced into writing by PW-5 on the dictation of the complainant line by line. He denied the suggestion that the money was not received by Prem Pal in his presence. In another part of the cross-examination PW-3 stated that he cannot vouchsafe about the correctness of the complaint. It is this evidence which has been heavily relied upon by the Trial Judge to hold that PW-3 is not a steady witness. In another part of the cross-examination, PW-3 when confronted with the statements made in the departmental inquiry qua the accused persons (Ex.PW-3/DA and Ex.PW-3/DB) had admitted that in those statements he had stated that while giving the money the complainant had CRL A. 93/2012 Page 8 of 23 told Prem Pal that Rs.300/- was for Ved Prakash, one inspector and Rs.600/- was for Suresh Kumar, Health Inspector. 11 PW-5 has recorded the complaint of the complainant. He had deposed to the said effect. He was the raiding officer; it was in his presence that after the signal was given by PW-3 that accused Prem Pal was arrested and recovery of the GC notes was made; the hand wash of the accused was taken in his presence and he had recorded Ex.PW-3/A. He had also recorded pre- raid report Ex.PW-3/B wherein the demonstration as to how the GC notes of Rs.900/- coated with phenolphthalein and how the solution turned pink when the hands of PW-3 dipped into the solution. He was a part of the raiding team. On the signal given by the Panch Witness (PW-

3) he reached the spot. He saw the position of the complainant, Panch Witness as also of Prem Pal. He saw the complainant giving some notes to Prem Pal. PW-3 and the complainant informed him that Prem Pal had taken this bribe from the complainant. On questioning Prem pal had responded that he had received the money on behalf of the Ved Prakash Sanitary Inspector and Suresh Kumar Kaushik Inspector Enforcement in the NDMC. Further proceedings in the raid were conducted by PW-5. PW-5 was subject to a lengthy cross- examination. He admitted that the complaint Ex.PW-3/A was in his hand CRL A. 93/2012 Page 9 of 23 writing. He admitted that no public person was called. Prem Pal was arrested by PW-4 (Inspector J.P.Raghav). He did not know whether accused Ved Prakash and Suresh Kumar Kaushik were exonerated in the departmental inquiry. 12 The sanction for prosecution qua the accused Prem Pal under Section 19 of the P.C.Act was proved through the testimony of PW-6. Bio Data of the other accused i.e. Suresh Kumar Kaushik and Ved Prakash was prepared by PW-7, the medical officer in the NDMC. Sanction for their prosecution had been proved through PW-9 as Ex.PW-8/A and Ex.PW-8/B. The Investigating Officer who had filed the charge sheet was PW-8 (Inspector Sukhbir Singh). 13 In the statement of the accused recorded under Section 313 Cr.P.C. all of them stated that they have been falsely implicated in the present case and they are innocent. No separate line of defence has been adopted. 14 In defence respondent nos.2 to 3 produced one witness i.e. DW-1. DW-1 had produced the summoned record from Vigilance Department relating to the departmental inquiry qua Ved Prakash and Suresh Kumar Kaushik showing that Ex.DW-1/A and Ex.DW-1/B had exonerated both of them in the departmental proceedings. CRL A. 93/2012 Page 10 of 23 15 The Trial Court had acquitted the accused persons largely for three reasons. The Trial Court was of the view that there was no demand which had been established through the testimony of PW-3. Demand is a necessary ingredient for the offence under Sections 7 and 13(1)(d) of the PC Act; in the absence of this essential ingredient, the accused persons were entitled to a benefit of doubt. The second line of argument which had weighed in the mind of the Trial Court was the credibility of PW-3 which was that since PW-3 in one part of his cross-examination had stated that he cannot vouchsafe the correctness of the contents of Ex.PW-3/A (complaint); such a witness could not be believed. Another reason for holding that

the case of the prosecution must fail was that the complainant Shyam Sunder Kohli (complainant) could not come into the witness box as he had died prior to his statement being recorded. The Trial Judge was of the view that the essential questions relating to the complainant could thus not be answered as the complainant unfortunately could not be tested in cross-examination. All these factors had weighed in the mind of the Trial Judge while acquitting the accused persons. 16 Before this Court adverts to the merits of the controversy, this Court would like to reiterate that the principles governing acquittals which are well CRL A. 93/2012 Page 11 of 23 settled and are being kept in mind by this Court before dealing with the arguments and the counter arguments of the parties. There is no doubt to the settled proposition that an order of acquittal cannot be lightly interfered with by the superior courts. The High Court may not interfere with an acquittal unless there is a wholly wrong appreciation of the material facts i.e. where the whole evidence has not been appreciated properly and to the fullest. Where two views are possible keeping in view the evidence on record; one favoring the accused and one against the accused, the High Court will not interfere on the ground that it might have given a finding against the accused had it itself tried the case. 17 Keeping this touchstone and principle in mind, this Court shall now examine the evidence adduced both oral and documentary before the Trial Court. 18 PW-3 is the most relevant witness. It may also be necessary to point out that the testimony of a witness has to be read as a whole and one line cannot be picked up to give it a meaning which would otherwise not be borne out if the evidence is appreciated in a wholesome manner. 19 PW-3 had narrated the incident clearly. He had clearly and categorically described the manner in which the raid had been conducted. CRL A. 93/2012 Page 12 of 23 Prior to the raid he was a part of the pre-raid proceedings and it was in his presence that the complaint was drafted and written line to line on the dictation of Shyam Sunder Kohli/complainant by PW-5. PW-3 had also signed the complaint at point A. He had identified his signatures. He had also identified the signatures of the complainant on Ex.PW-3/A. This was a valid proof of the complainant. In this complaint, the complainant had categorically stated that since he was running a restaurant he was being bothered and the inspectors of the NDMC were asking him for a bribe failing which his restaurant would not be permitted to continue. In

this complaint he had named six inspectors but the raid which was conducted was qua two of the inspectors namely Ved Prakash and Suresh Kumar Kaushik (the sanitary inspector and inspector of the Enforcement of the NDMC respectively). The fact that Prem Pal was working as a safai karamchari in the same Unit of the NDMC is an admission position. This had not been denied by any person; this is in fact admitted by accused persons in their statement under Section 313 Cr.P.C. The Trial Judge holding that there is no connectivity between Prem Pal, Suresh Kumar Kaushik and Ved Prakash has committed a fallacy. He has read something into the evidence which was not there. CRL A. 93/2012 Page 13 of 23 20 That part of the testimony of PW-3 highlighted both by the prosecution and by the defence and which would nail the accused one way or the other is extracted herein below; it reads as under: At about 2.45 p.m. a safaikaramchari Prem Pal came and sat near the complainant. Accused Prem Pal now present in the Court told the complainant that inspector Ved Prakash and Suresh Kumar sent him to collect the amount of Rs.900/-. Complainant took out the money and gave in hand of Prem Pal who counted the same and kept the same in fist. Thereafter, I gave predetermined signal to the raiding party. Members of raiding party came and apprehended the accused Prem Pal. 21 This version of PW-3 read with his statement in the departmental proceedings i.e. his statement recorded before the Inquiry Officer Ex.PW-3/DA and Ex.PW-3/DB wherein he had stated that while giving the money the complainant Shyam Sunder Kohli had told Prem Pal that Rs.300/- was for Ved Prakash and Rs.600/- was for Suresh Kumar Kaushik, Health Inspector were other relevant pieces of evidence which have not been correctly appreciated by the Trial Judge. The version of PW-3 is clear. It is clear and categorical to the effect that he was sitting at a few paces away from the complainant (which was as per the instructions of the raiding officer and this was in order that he could overhear the conversation between the complainant and the accused Prem Pal) and he saw that before the CRL A. 93/2012 Page 14 of 23 complainant gave the money to Prem Pal, Prem Pal told him that he had been sent by Ved Prakash and Suresh Kumar Kaushik to receive a sum of Rs.900/-; it was only thereafter that the complainant handed over Rs.900/- to Prem Pal. In the departmental proceedings PW-3 had made a statement that when the complainant handed over the money to Prem Pal he had told him that Rs.300/- was for Ved

Prakash and Rs.600/- was for Suresh Kumar Kaushik. These statements are a part of the record and stand proved. In his deposition, on oath, PW-3 had again clarified that accused Prem Pal told the complainant that Ved Prakash and Suresh Kumar Kaushik had sent him to collect the amount of Rs.900/- upon which the complainant took out the money and gave the same in the hands of Prem Pal who after counting the same kept in his fist. 22 The demand envisaged in Section 13(1)(d) of the P.C. Act is implicit in this version noted supra. The money had been handed over by the complainant to Prem Pal only when Prem Pal told the complainant that he had come to collect this amount of Rs.900/- on behalf of Ved Prakash and Suresh Kumar Kaushik. This statement reflects the implicit demand made by Prem Pal which demand was on behalf of Ved Prakash and Suresh Kumar Kaushik. It was on this statement that the complainant handed over the sum CRL A. 93/2012 Page 15 of 23 of Rs.900/- to Prem Pal. Prem Pal counted the money and then put it in his fist. 23 There was prima facie sufficient evidence with the Trial Court to hold that the presumption under Section 20 of the P.C.Act had to be drawn. The presumption as contained in Section 20 of the P.C.Act is a presumption which is available to a court of law which may be drawn for an offence punishable under Section 7 of the P.C.Act. Once the money had been recovered from the accused and the possession of the GC notes were found with Prem Pal, the burden shifted upon him to explain the circumstances as to how this money came into his hands and to then prove his innocence. This is clearly contemplated in the aforementioned section. This has been held by the Apex Court in the judgment reported as AIR 1992 SC1201B.Hanumantha Rao Vs. State of Andhra Pradesh. The words used in this section are shall be presumed. It is a mandate of the legislature that the Court is bound to take a fact as proved until evidence is adduced to disprove the same and the party disputing it must lead evidence on this score. In the statement of all the accused persons under Section 313 Cr.P.C. and particularly of accused Prem Pal there was no rebuttal to this presumption. It has nowhere been explained by the defence as to how this money had come in the hands of CRL A. 93/2012 Page 16 of 23 Prem Pal. The arguments propounded by the learned counsel for Prem Pal that this money would be some other money other than the bribe money has neither been expounded and nor explained, even though the accused had ample opportunity to do so not

only at the time of cross-examination of the witnesses of the prosecution by giving suggestions to the said effect but even while getting their statements recorded under Section 313 Cr.P.C. This rebuttable presumption has not rebutted. 24 The Apex Court in T.Shankar Prasad Vs. State of A.P. reported as (2004) 3 SCC753 in the context of Section 20 of the P.C.Act while noting similar facts of that case had held as under: Section 20(1) of the Act in essence and substance is same as Section 4(1) of the previous Act of 1947. The expression shall be presumed employed in this section read with the definition of shall presume in Section 4 of the Evidence Act, 1872 shows it must have the same import of compulsion, that is to say that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc. if the condition envisaged in the former part of the section is satisfied. The only condition for drawing legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. But the section does not say that the said condition should be satisfied only by direct evidence. It can be proved by other modes envisaged in the Evidence Act. CRL A. 93/2012 Page 17 of 23 When money was recovered from the pocket of one of the accused persons, a presumption under Section 20 of the Act is obligatory. It is a presumption of law and casts an obligation on the court to operate it in every case brought in Section 7. The presumption is rebuttable presumption and it is by proof and not by an explanation which may seem to be plausible. The evidence of PWs 4, 5, 7 and 8 read with the evidence of PW1 established recovery of money from A-2. A belated and state explanation was offered by A-2 that the money was paid towards tax. This plea was rightly discarded as there was no tax due and on the contrary the complainant was entitled to some refund. An overall consideration of the materials sufficiently substantiates, in the case of hand, the prevalence of a system and methodology cleverly adopted by the accused that the demand will be specified when both the accused were present and thereafter as and when A- 1 puts his signature the party has to meet A-2 at his seat for fixing the seal and making entry in the register to make the process complete only after collecting the amount already specified by A-1 in A-2s presence. The involvement of both of them in a well-planned and cleverly managed device to systematically collect money stood sufficiently established on the evidence let in by the prosecution. 25

The Trial Court relying upon one line of the version of PW-3 wherein he had stated that he cannot vouchsafe the contents of the complaint and holding that the accused persons are entitled to an acquittal and discarding the otherwise credible version of PW-3 has committed an illegality. At the CRL A. 93/2012 Page 18 of 23 cost of repetition, from the wholesome testimony of a witness, no one line can be extracted to give it a meaning which is otherwise not borne out from the reading of the entire version. This statement had been made (in the context of an earlier proceedings) by PW-3 wherein he had stated that the complaint Ex.PW-3/A that Prem Pal had told the complainant that he had been sent by accused Ved Prakash and Suresh Kumar Kaushik to collect the bribe money; he was clarifying that this statement had been given by the complainant in his complaint and not by PW-3 in his statement to the Investigating Officer. 26 The fact that the complainant could not be examined because he had died before he could come into the witness box has also been given an undue importance by the Trial Court. Complaint Ex.PW-3/A was written in the hand writing of PW-5. PW-3 had deposed that this was a line to line dictation which had been recorded by PW-5. The complainant had signed this complaint. His signatures had been identified by PW-3. PW-3 had also identified his own signatures on Ex.PW-3/A. The complaint stood proved. The vehement argument of the learned counsel for the accused that unless and until the complainant could have been cross-examined, the case of the prosecution could not be proved is an argument noted to be rejected. The CRL A. 93/2012 Page 19 of 23 questions which the learned defence counsel proposed to put to the complainant could well have been put to PW-3. PW-3 was sitting within a hearing distance and had heard the conversation which he had transpired between the complainant and the accused Prem Pal. This hearing distance was in terms of the instructions which had been received from the raiding officer (PW-5). He heard Prem Pal telling the complainant that he had come to collect money i.e. the amount of Rs.900/- on behalf of Ved Prakash and Suresh Kumar Kaushik. This part of the evidence of PW-3 is a relevant fact under Section 6 of the Evidence Act i.e. under the doctrine of res gestae. 27 Non examination of the complainant would not destroy the otherwise credible testimony of PW-3 which has been corroborated by the version of PW-5 who was also a part of the raid and had witnesses the money being handed over by the complainant to Prem Pal. At the cost of

repetition, once the money was recovered from Prem Pal, the onus shifted upon Prem Pal to explain as to how this money came into his hands. He has not whispered any word on this count. He had no explanation to give. He could have given suggestions to the witnesses of the prosecution and particularly PW-3 if he wanted to build up a line of defence, on this count. He admittedly had no line of defence; that is why there is nothing on this count even in his CRL A. 93/2012 Page 20 of 23 statement recorded under Section 313 Cr.P.C. 28 Ved Prakash (Health Inspector) and Suresh Kumar Kaushik (Inspector Enforcement) were entitled to challan the restaurant of the complainant. The complainant had made a categorical statement against their role. This finds mention in Ex.PW-3/A. PW-3 had heard that part of the conversation ensued between the complainant and Prem Pal wherein Prem Pal told the complainant that he had come to receive this money on behalf of Ved Prakash and Suresh Kumar Kaushik. This money was nothing but the bribe money which had been asked for by the said Inspectors. 29 Section 7 of the P.C.Act clearly pre-supposes a situation where a gratification has been accepted by a public servant as a motive or reward either for himself or for any other person; the offence would be complete. A motive or reward for doing as is contained in the terminology of Section 7 encompasses a motive or reward for doing what he does not intend to do or even if he is not in a position to do the said act. Once this reward has been accepted or shared the inference which has to be drawn is that the said gratification was accepted as a motive or reward for doing or forbearing to do an official act. This voluntary and conscious acceptance of the money by Prem pal sets the case at rest. The presumption under Section 20 of the CRL A. 93/2012 Page 21 of 23 P.C. Act was attracted. The Trial Court not relying upon this presumption has committed an illegality. The amount had passed on to a public servant. The burden now lay upon Prem Pal to establish that this amount was not by way of an illegal gratification. This burden could not be discharged by him. 30 The recovery of the money from Prem Pal is an undisputed fact. The The FSL report opining that the hand wash of Prem Pal matched the coated notes (coated with phenolphthalein) is also an admitted fact. The report of the FSL (Ex.PW-4/B) is admissible under Section 293 of the Cr.P.C. The defence did not choose to cross-examine the witnesses of the FSL. The Trial Judge has failed to appreciate this part of the evidence in the correct perspective. Respondent no.2

and respondent no.3 were the beneficiaries of this illegal gratification. 31 The findings of the Trial Judge are nothing short of perversity. This Court is constrained to interfere with these findings of the Trial Judge. The order of acquittal is accordingly set aside. The respondents nos.1 to 3 are convicted for the offences under Sections 7 and 13 (1)(d) read with Section 13(2) of the P.C.Act. 32 For the offence under Section 7 of the P.C.Act, the minimum prescribed sentence is 6 months; for the offence under Section 13(1)(d) read CRL A. 93/2012 Page 22 of 23 with Section 13(2) of the P.C.Act the minimum sentence is 1 year. 33 Noting that a long period has elapsed from the date of the offence which is 11.5.2001, this Court is of the view that the a minimum sentence of 6 months RI and a fine of Rs.1000/- in default of payment of fine to undergo SI for 1 month is imposed upon the respondents for the offence under Section 7 of the P.C.Act and for the offence under Section 13(1)(d) read with Section 13(2) of the P.C.Act a minimum sentence of 1 year and a fine of Rs.2000/- in default of payment of fine to undergo SI for 2 months is imposed upon the respondents. Benefit of Section 428 Cr.P.C. shall be granted to the respondents. 34 The respondents nos.1 to 3 are on bail; their bail bonds are cancelled and sureties discharged. They be taken into custody to serve the remaining sentence. 35 Appeal is allowed and disposed of in the above terms. FEBRUARY13 2018 ndn INDERMEET KAUR, J CRL A. 93/2012 Page 23 of 23