

Mahipal Singh Vs. State

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Court : Delhi

Decided On : Apr-20-2015

Judge : Vipin Sanghi

Appellant : Mahipal Singh

Respondent : State

Judgement :

\$~. * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

25. 02.2015 % + Judgment delivered on:

20. 04.2015 CRL. A. 341/2008 MAHIPAL SINGH Appellant Through: Mr. Naresh C Sharma and Mr. Chetan Swarup, Advocates versus STATE Respondent Through: Mr. Lovkesh Sawhney, APP. CORAM: HON'BLE MR. JUSTICE VIPIN SANGHI

JUDGMENT

VIPIN SANGHI, J.

1. The present appeal is directed against the judgment dated 03.04.2008 delivered by Sh. AS Yadav, learned Special Judge, Delhi in Corruption Case No.30/03, by which the appellant was convicted for the offence punishable under sections (u/s) 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 (PC Act) punishable

under Section 13(2) PC Act. By the order on sentence dated 04.04.2008, the appellant was sentenced to undergo Rigorous Imprisonment (RI) for a period of three years along with a fine of Rs.10,000/-, and in default of payment of the fine - Simple Imprisonment (SI) for two months u/s 7 of PC Act. For offences punishable under section 13(2) read with section 13(1)(d) of the PC Act, the appellant has been sentenced to undergo RI for three years along with a fine of Rs 10,000/-, and in default of payment of the said fine further SI for two months. Both the sentences were to run concurrently.

2. The case of the prosecution is that- the complainant (PW-6), Mohd. Zakir, purchased a room at the address- 618, Gali Telian, Ganj Meer Khan, behind Delite Cinema, Delhi for a sum of Rs. 1,25,000/- from his uncle, Abdul Gaffar, vide an agreement to sell. However, the complainants uncle did not execute the documents. On 28.10.2002, Zayeed, son of the complainants uncle Abdul Gaffar along with his friends assaulted the complainant, and attempted to take the agreement to sell back from him. The Police was informed of the said incident by the brother-in-law of the complainant (wherein complainant was assaulted), and the accused, ASI Mahipal Singh, reached the spot of the incident. The complainant was, thereafter, taken to LNJP Hospital for examination.

3. The further case of the prosecution is that the complainant was beaten up by the accused in the Police Station, and was asked to compromise the matter with his uncle, Abdul Gaffar. The accused took Rs. 500/- from the complainant. Thereafter, the accused called the complainant a number of times to ask him regarding the status of the compromise. On 01.11.2002, the complainant (PW-6) went to PS Chandni Mahal, where he met the accused. The accused demanded Rs. 5,000/- from the complainant (PW-6) for getting the matter settled. When the complainant showed his inability to pay the money - as he is poor, the accused told the complainant to pay Rs. 2,000/by the end of the day, and Rs. 3,000/- after the compromise came about. As the complainant was not willing to pay the aforesaid bribe, he went to the Anti-Corruption Branch (ACB) office where his complaint (Ex. PW6/A) was recorded in presence of the panch witness, Satpal Rohilla (PW-7).

4. After lodging of the complaint, the complainant (PW-6) produced 4 GC notes of Rs.500/- denomination and gave them to PW-9, the Raid Officer. The serial numbers on the GC notes were noted down in the preraid proceedings report (Ex. PW7/A). Thereafter, the panch witness (PW-7) and the complainant (PW-6) were explained and demonstrated the reaction of Phenolphthalein powder with colourless solution of Sodium Carbonate by the Raid Officer (PW-9). The Phenolphthalein treated GC notes were given to the complainant and he kept them inside his pocket, with directions to hand over the GC notes to the accused only on his specific demand of the money, or to any other persons as per his directions, and not otherwise. The panch witness (PW-7) was directed to remain close to the complainant (PW6), to be able to hear the conversation between the accused and the complainant (PW-6), and to give the pre-determined signal to the raiding party, on acceptance of bribe by the accused.

5. The Raiding party, including the panch witness (PW-7) and the complainant (PW-6), left for PS Chandni Mahal from the ACB office in a government vehicle at around 6:00 PM on 01.11.2002. The vehicle was parked at a distance from PS Chandni Mahal, where the raiding party waited, while the panch witness and complainant went towards the police station. At about 7:20 PM, the Raid Officer (PW-9) received the pre- determined signal from the panch witness (PW-7). Then he, along with the raiding team, went towards the police station and were taken to room No.5 of PS Chandni Mahal by the panch witness, where the complainant (PW-6) and the accused were sitting.

6. The complainant (PW-6) told the Raid Officer (PW-9) that accused had demanded and accepted gratification of Rs. 2,000/-. He told that it was accepted by the accused with his right hand and kept in the left side pocket of his pant by left hand. Thereafter, the panch witness (PW-7) recovered the bribe of Rs. 2,000/-, which were 4 GC notes of Rs 500/- denomination from the left side pocket of the pant of the accused. The serial numbers on the GC notes recovered from the accused tallied with the numbers mentioned on the pre-raid proceedings report (Ex. PW7/A). Thereafter, both hands of the accused were washed with the colourless solution of Sodium Carbonate, which turned pink. The solution was transferred in four small clean empty bottles, which were sealed with seal of RSK,

and were affixed with the slips marks as RHW-I, RHW-II, LHW-I and LHW-II. The slips were signed by the complainant (PW-6) and the panch witness (PW-7). Similarly, the left side pocket of the pant of the accused was washed with the colourless Sodium Carbonate solution, which turned pink. The samples of the pant wash were collected in clean bottles which were sealed and affixed with the slips marked as LSPPW-I and LSPPW-II, after signatures of the complainant (PW-6) and the panch witness (PW-7). The post-raid proceedings (Ex. PW6/D) were drawn by the Raid officer, and Rukka (PW9/C) was prepared. The Investigating Officer (IO) SS Sandhu (PW-11) was called to the spot. The custody of the accused and documents were handed over to the IO (PW-11). Site plan (Ex. PW11/A) was prepared at the instance of the complainant and the panch witness by the IO, the accused was arrested by him, and his personal search memo was prepared vide Ex. PW- 7/E.

7. After completion of the investigation, the IO filed the charge-sheet. The sanction for prosecution was granted by the Dy. Commissioner of Police, Central Distt, Delhi, Arvind Deep (PW-10) vide sanction order Ex. PW-10/A dated 12.06.2003. The charges under Section 7 and Section 13 of PC Act were framed against the accused. The accused in his statement under Section 251 Cr PC admitted to being present at the spot of incident, but denied the case of the prosecution, and claimed trial. The prosecution examined 15 witnesses to prove its case. They were: PW-1 HC Bhairu Sahai - the Duty Officer at PS Chandni Mahal; PW-2 Const. Parveen Kumar - the Chitha Munshi; PW-3 Birju Singh -the Head Constable at ACB Office; PW4 Const. Raj Kumar - He was posted as Assistant MHC(M) at PS Civil Lines; PW-5 HC Satender Singh - He was posted as MHC(M) at PS Civil Lines; PW-6 Mohd. Zakir - the complainant, PW-7 Shri. Satpal Rohilla - the Panch Witness; PW-8 HC Jai Singh - the Head Constable at ACB Office; PW-9 Insp. Rai Singh Khatri - the Raid Officer; PW-10 Sh. Arvind Deep - the Sanctioning Authority; PW-11 Insp. SS Sandhu - the IO; PW-12 Dr. Mohd. Ajazur Rahman - the SMO, Incharge Family Planning, Deputy Medical Superintendent, OPD. LNJP Hospital; PW-13 - Retd. Asstt. SI Swaroop Chand; PW-14 Const Ram Charan - the Constable at PS Chandni Mahal; PW-15 - Sh. Riyazuddin.

8. Learned Counsel for the appellant submits that essential ingredient- demand and conscious acceptance of illegal gratification, has not been established by the prosecution, and as such, the accused cannot be held guilty under Sections 7 & 13 of the PC Act. There has to be a demand made by the accused, and no one else. He submits that the complainant (PW-6) deposed on 26.07.2006, that the gratification was demanded and accepted by the person who accompanied the accused in the police station, and not by the accused himself. In his cross-examination, the complainant (PW-6) had not supported the case of the prosecution, as he stated that the accused was accompanied by another person when the complainant went to PS Chandni Mahal on the day of trap. He had stated that the other person with the accused had demanded the illegal gratification, and he was the one who accepted the bribe from him. Thus, the demand and acceptance of illegal gratification, which are essential ingredients, were not established by the prosecution against the accused.

9. Ld. Counsel further submits that the panch witness (PW-7) also did not support the case of the prosecution. In his examination dated 25.01.2007 PW-7 stated that another person was present in room No.5 in Police Station when he, along with the complainant (PW-6) entered the room. The other person was sitting on a chair. He further deposed that No conversation regarding the transaction took place. However, complainant took those treated notes and put in the pocket of the accused. Ld. Counsel submits that this shows that there was no demand of illegal gratification by the accused, and the complainant put the GC notes in the pocket of the accused without any demand. Hence, the offence under Sections 7 and 13 is not made out.

10. Ld. Counsel for the appellant submits that there is a serious contradiction in the case of the prosecution with regard to the date of the raid. The complainant (PW-6) had deposed during his examination-in-chief recorded on 26.07.2006, that the raid/trap by the raiding party took place on the next date of the incident. The incident, i.e. the quarrel with Abdul Gaffar and his associates had taken place on 28.10.2002. Therefore, according to the testimony of PW-6, the trap was laid and raid conducted on 29.10.2002, whereas, the prosecution alleges that the raid/trap proceeding took place on 01.11.2002. The complaint (Ex. PW-6/A) is also dated

01.11.2002. Thus, the story of the prosecution is not reliable.

11. Ld. Counsel further submits that according to the complainant (PW- 6), the pre-raid proceedings (Ex. PW-7/A) were not recorded at the ACB office. He deposed on 26.07.2002 that no writing work was done in the anti corruption branch before leaving the anti corruption branch. He has further deposed that after the raiding party was given the pre-determined signal by the panch witness (PW-7) and it arrived, the accused and complainant (PW-6) were kept in separate rooms, and no proceedings were conducted in his presence at the Police Station. After 2-3 hours, the members of the raiding party took signatures of the complainant on some documents. Learned counsel submits that this makes the documents led in evidence by the prosecution untrustworthy, since they were not prepared in the presence of the complainant (PW-6), nor did the proceedings take place in presence of the complainant.

12. Ld. Counsel submits that according to the prosecution, the complainant went to the ACB office at 5:30 PM to lodge his complaint, and left for PS Chandni Mahal at around 6 PM. The Raid Officer (PW-9) also deposed to the same effect. He submits that it is improbable that the complaint was lodged; the independent witness was called, and; pre-raid proceedings conducted and recorded in a period of half an hour. He further submits that the panch witness (PW-7) was a stock witness, as he was already present in the ACB office on the day of the trap. Usually, the independent witness is called to accompany for the trap after a complaint has been lodged, but in the present case, the panch witness was already present in the office when the complainant came to lodge the complaint.

13. In support of his submissions, Ld. Counsel for the appellant has placed reliance on:

14. i. Suraj Mal vs State, 1979 (4) SCC725ii. V.Venkata Subbarao vs State, 2007 (3) SCC (Cr.) 175 iii. State of Punjab vs Madan Mohan Lal, 2013 (1) Scale 211 iv. T.C. Chawla vs CBI, 2014 (3) JCC2005v. Parmanand vs CBI, 2014 (1) JCC336vi. Prem Singh Yadav vs CBI, 211 (178) DLT529Learned APP for the State, Mr. Sawhney, submits that demand and conscious acceptance of illegal gratification has been established beyond reasonable doubt by the prosecution. He submits

that the complainant (PW6) in his complaint (Ex. PW-6/A) has evidently stated that the accused asked him for a gratification of Rs. 5,000/- to settle the matter on 01.11.2002, when he visited the PS Chandni Mahal before lodging of complaint, but it was finally settled that Rs. 2,000/-, was to be paid the same evening, and the remainder after the compromise.

15. Ld. APP submits that the complainant (PW-6) has nowhere in his complaint mentioned about the presence of another person with the accused at PS Chandni Mahal, or, that the said other person demanded the gratification from the complainant. The entire story of presence of another person at the police station is an afterthought and concocted to protect the accused person. Mr Sawhney submits that the complainant (PW-6) had turned hostile. He submits that the testimony of a hostile witness can be relied upon by the prosecution to the extent it supports the case of the prosecution and is corroborated by other evidence. Hence, in the present case, statements of the key witnesses (the complainant and panch witness) along with the corroborative evidence could be relied upon by the prosecution to establish the demand and acceptance of illegal gratification by the accused.

16. While dealing with the reliance placed by the accused on the testimony of the complainant (PW-6) that another person, apart from the accused, was present in the room when he met the accused in PS Chandni Mahal, and that the bribe was accepted by the other person, Mr. Sawhney submits that on hand/pocket wash of the accused with Sodium Carbonate solution, it turned pink. If the gratification was accepted by the other person (not the accused) present in the room, then the solution would not have turned pink on the hand and pocket wash of the accused. The solution turning pink on the hand and pocket wash of the accused corroborates the case of the prosecution against the accused. This establishes that the gratification was accepted by the accused, and not by the unnamed other person.

17. Ld. APP submits that the post-raid proceedings/panchnama (Ex. PW- 6/D) corroborates the testimony of PW-7 about the demand and acceptance of the bribe - it being a record of the events which took place during and after the trap. It

being a statement of the panch witness (PW-7), the same can be used as evidence to further establish demand and acceptance of illegal gratification by the accused/appellant. He submits that the statement recorded in the panchnama is not a statement of the accused. It is a narration of events which have happened in the past in the presence of witnesses, as seen and heard by them. The record of events in the panchnama (Ex. PW-6/D) corroborates the acceptance of bribe by the accused. The panchnama (Ex. PW-6/D) records that the panch witness pointed towards the accused and informed that after demanding the bribe, the accused accepted it with his right hand, and thereafter kept it in his left pocket of the pant by his left hand. It is not hit by Section 161 of Cr PC, and is admissible under Section 157 of the Evidence Act. Reliance is placed on Valibhai Omarji vs. The State, AIR1963 Gujarat 145, in this regard.

18. Further, Ld. APP submits that the mandatory presumption under Section 20 of the PC Act is bound to be raised in the present case, because the demand and conscious acceptance of gratification has been clearly established by the prosecution. Thus, the Court would presume that the demand and acceptance of gratification was for motive, or as a reward (other than legal remuneration), for bringing about a settlement between the complainant and his uncle Abdul Gaffar & Others. Learned counsel submits that the accused could not provide any explanation for the treated GC notes found on him.

19. Ld. APP, in support of his submissions, has placed reliance on the following:

20. i. State of Andhra Pradesh vs R. Jeevaratnam, 2004 (2) JCC1161ii. State of Uttar Pradesh vs Zakaullah, AIR 1998 SC1474iii. Hazari Lal vs The State, AIR 1980 SC873I have considered the rival submissions of learned counsel for the appellant and the learned APP, and examined and appreciated the evidence led in the present case, as also the decisions relied upon by learned counsels on either side. I have also perused the impugned judgment.

21. To begin with, I may take note of the legal position with regard to the admissibility of the evidence of a hostile witness. In Sat Paul Vs. Delhi Administration, AIR 1976 SC294 the Supreme Court held that when a witness is cross-examined and contradicted with the leave of the Court by the party calling

him, his evidence cannot, as a matter of law, be treated as washed of the record altogether. It is for the Judge of fact to consider in each case, whether - as a result of such cross-examination and contradiction, the witness stands thoroughly discredited, or can still be believed as regards a part of his testimony. If a Judge finds that the credit of the witness has not been completely shaken in the process, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of other evidence on record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.

22. The decision in *Sat Paul* (supra) was followed by the Supreme Court in *Koli Lakhmanbhai Chanabhai Vs. State of Gujarat*, AIR 2000 SC210 The Supreme Court, inter alia, held as follows:

It is settled law that evidence of hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base his conviction upon his testimony if corroborated by other reliable evidence. [Re: *Bhagwan Singh v. State of Haryana* (1976) 1 SCC389: (AIR 1976 SC202:

1976. CrI LJ203 and *Sat Paul v. Delhi Administration* (1976) 1 SCC727: (AIR 1976 SC294 1976 CrI LJ295)].

23. Therefore, merely because the complainant (PW-6) and the panch witness (PW-7) have turned hostile to a certain extent, the accused cannot claim that their testimonies have to be disregarded altogether as it would require a deeper scrutiny of the entire evidence to examine whether, despite the said witnesses turning partially hostile, the said witnesses are creditworthy qua their testimony relied upon by the prosecution.

24. I may first take note of the complaint (Ex. PW-6/A). The complainant (PW-6) has proved the said complaint. He, inter alia, deposed in his examination-in-chief

recorded on 26.07.2006 that I went to anti corruption branch and I narrated the incident to one Inspector who became ready to accompany me to the accused. Upon being cross-examined by the learned APP, he deposed that it is correct that complaint (PW-6/A) bears my signatures at point A.

25. PW-6 is an ordinary citizen, belonging to the middle class - as is evident from his bearings. It has not been claimed that any case was pending against him, under investigation by the accused. In fact, it is PW-6, who had suffered injuries and was got examined by the accused. He had no axe to grind against the accused. It does not stand to reason, and unbelievable that PW-6 would lodge a false complaint against the accused - a Police officer of the local Police Station having jurisdiction of his place of residence, without any cause.

26. PW-7, in his examination-in-chief recorded on 25.01.2007, inter alia, stated:

On 1.11.2002 I was posted as stock Assistant in Veterinary Hospital, Village Tikri Kalan, Delhi and was on duty as panch witness in Anti Corruption Branch on that day. I had reached in Anti Corruption Branch at 10.00 a.m. At about 5.30 p.m. complainant Zakir came in Anti Corruption Branch and I was called there. PW-7, the panch witness upon his crossexamination by the APP stated:

It is correct that in Anti Corruption Branch Raid Officer recorded the complaint Ex.PW-6/A, which bears my signature at point B.

27. Once again, PW-7 has no reason to falsely depose against the accused and falsely implicate him. The accused has not claimed that PW-7 was earlier acquainted with him, or that he had any reason to harbour any malice towards him.

28. The Raid Officer (PW-9) deposed as follows in relation to the complaint (Ex.PW-6/A):

On 01.11.2002, I was posted as Inspector in Anti Corruption Branch. On that day, complainant Mohd. Zakir came in Anti Corruption Branch at about 5.30 p.m. and he got his complaint Ex. PW-6/A recorded in the presence of Panch Witness Sh. Satpal. The complaint was regarding the demand of bribe by one ASI for the

settlement of dispute between the complainant and his uncle.

29. In his cross-examination on behalf of the accused, PW-9 further deposed as follows:

The complainant had first met with DCP/Anti Corruption Branch and then he referred the complainant to me. The complainant had come in Anti Corruption Branch all alone. Complaint approached me at about 5.30 p.m. The complaint Ex.PW6/A is in my handwriting. It took about 7-10 minutes in recording of the complaint. The panch witness was already present in Anti Corruption Branch. I did not verify the genuineness of the complaint after writing down the complaint and before proceeding for the raid. It is correct to suggest that the complaint is not bearing the endorsement of any senior officer of Anti Corruption Branch. Voln. The same is not required.

30. A perusal of the complaint (Ex. PW-6/A) shows that the complainant, inter alia, stated to the following effect: Today morning I went to Police Station Chandni Mahal to meet ASI Mahipal when he demanded Rs.5,000/- from me and stated that he would get the dispute (between the complainant and his uncle Abdul Gaffar) settled. The complainant told the accused that he is a poor man and that he does not have so much money. On this, the accused stated that the complainant should pay to him Rs.2,000/- by today evening, and the remaining amount of Rs.3,000/- would be taken by him after the compromise has been arrived at between the complainant and his uncle Abdul Gaffar. The complainant further stated that he does not wish to give bribe to ASI Mahipal - accused, and that legal action be taken against him.

31. The complaint (Ex. PW-6/A) is directed only against the accused and no one else. It categorically states that the demand of money had been made by the accused, for himself, and not by any other person, or for any other person. It does not stand to reason as to why the complainant would make a complaint against the accused, if the money had been demanded by any other person. If that were so, the complainant would have made a complaint against that other person - who has not even been named, and not falsely implicate the accused for no rhyme or reason.

32. The complainant - in his deposition, while claiming that another Police official accompanying the accused told the complainant to pay Rs.5,000/- to him, gave the same reason for the demand as had been given in his complaint Ex.PW-6/A, i.e. for getting the matter compromised. He also supports the complaint by deposing that Finally, it was settled that I would pay an amount of Rs.2,000/- on that day in the evening and the balance of Rs.3,000/- after the compromise. PW-6 also deposed with regard to the pre-raid proceedings. He deposed that I produced four GC notes of Rs. 500/-. The Raid Officer applied some powder on those GC notes. Thereafter those GC notes were kept in my pocket. One person was along with me. I along with that person and the members of raiding party left anti corruption branch by a van for PS Chandni Mahal at about 7.00 p.m. The vehicle was left at Turkman Gate. I along with that person were sent inside the police station while the other members of raiding party took their positions outside the police station. Pertinently, the complainant (PW-6) deposed that:

Accused present in the court met me in the police station. Thereafter I gave those treated GC notes to the accused and thereafter that person who was along with me called the raiding party. Thus, the complainant (PW-6) deposed that the treated GC notes were given to, and accepted by the accused and not by any other person. If the money had been demanded by any other person, other than the accused, there was no occasion for the complainant to give the treated GC notes to the accused, or for the accused to accept the same and keep the same in his pant pocket.

33. In his cross-examination by the learned APP, the complainant (PW-6) admitted that he did not tell the Police - regarding the assertion made to him, that the associate of the accused had earlier received money from him, and had also demanded Rs.5,000/- from him. In his further cross- examination by the learned APP, the complainant (PW-6), inter alia, stated:

It is correct that when the members of the raiding party came after receiving signal, the anti corruption branch officials disclosed their identity on which accused became perplexed and on the instructions of the raid officer, the bribe amount was recovered from the left side pant pocket of the accused present in court. It is

correct that I had told to the police that the serial numbers of those recovered GC notes were tallied with pre raid report which tallied and were taken into possession vide memo. Thereafter the hands wash of accused was taken in some water like solution which turned into pink.

34. Though the complainant denied the suggestion that the left side pant pocket wash of the accused was also taken, he admitted the raid proceedings by stating:

It is correct that I had told to the police that thereafter that solution was transferred to six small empty clean bottles which were sealed with seal RSK and marked paper slips were pasted on those bottles which were signed by me, panch witness and the raid officer.

He further stated that:

The case property, bottles and other items were taken into possession by anti corruption branch vide memo Ex.PW6/C which bears my signatures at point A.

35. He also proved the post-raid report (Ex. PW-6/D) by stating as follows:

It is correct that the raid officer prepared post raid report which is Ex.PW6/D which bears my signatures at point A.

36. PW-6 also identified the case property, i.e. the six sealed bottles containing the hand and pant pocket wash by stating as follows:

I can identify the case property (At the stage six sealed bottles out of which three are sealed with the seal of RSK and three are sealed with the seal of FSL marked as RHW-I,II, LHW-I,II and LSPPW-1 and II have been produced and shown to the witness who after identifying his signatures on the paper marked slips on each bottles states that these are the same bottles which were prepared by the raid officer. The bottles are Ex.P1 to P6.)

37. Pertinently, PW-6 in the earlier part of his cross-examination, denied the taking of the left side pant pocket wash of the accused. However, during his further cross-examination, on the same day, he stated:

At this stage one pullanda sealed with the seal of RSK is produced from malkhana and is opened and one blue colour pant is taken out and shown to the witness who after identifying his signatures on the inner side portion of left side pocket of the pant states that it is the same pant which was taken into possession. The pant is Ex.P-11. The envelope containing the pant is Ex.P-12.

38. Upon his cross-examination by the counsel for the accused, PW-6, inter alia, stated:

It is further wrong to suggest that accused never demanded any money nor he accepted bribe and that Rs. 2000/- were planted on the accused.

39. Thus, the complainant asserted that the accused had demanded and accepted the bribe amount of Rs.2,000/- from him. He denied the suggestion that the said amount of Rs.2,000/- was planted on the accused.

40. PW-7, the panch witness deposed with regard to the pre-raid proceedings by stating as follows:

Complainant had given Rs. 2000/- to the Raid Officer who applied some powder on those GC notes and gave a demonstration by touching the treated GC notes with my finger and by dipping the same in some colourless water like solution which turned into pink. I was instructed by the Raid Officer to give a signal if someone takes those treated GC notes. Complainant was also instructed to remain close to me and to do the transaction in my presence.

41. The panch witness (PW-7) deposed with regard to the raiding party leaving the ACB for Police Station Chandni Mahal in a Government vehicle; about him going inside the Police Station along with the complainant (PW6); about the other members of the raiding team taking their position outside the Police Station; about the complainant enquiring at the Chandni Mahal Police Station regarding the accused Mahipal; about his being informed that he was in Room No.5, and; about him and the complainant going to Room No.5. However, PW-7 did not support the prosecutions case by stating:

No conversation regarding transaction of money took place. However, complainant took out those treated GC notes and put in the pocket of the accused.

42. Therefore, PW-7 at one stage sought to protect the accused by claiming that the accused did not make any demand for bribe amount in his presence, and that the complainant (PW-6) put the treated GC notes in the pocket of the accused in the pocket of the accused himself.

43. He further deposed with regard to his giving the pre-determined signals; the raiding team challenging the accused and recovering the treated GC notes from the pocket of the accused; and tallying of the serial numbers of the recovered GC notes with the serial numbers recorded in the pre-raid report. Upon being cross-examined by the APP, PW-7 stated with regard to the pre-raid proceedings held in the ACB, as also the fact that the complaint was regarding the demand for bribe for getting the matter of the complainant (PW-6) and his uncle compromised. He stated that the Raid Officer had recorded the serial numbers of the GC notes in pre-raid report (Ex. PW7/A). Even though, during his earlier statement he stated that no paper was written in the ACB, subsequently, he admitted that the pre-raid proceedings (Ex.PW-7/A) were drawn up in the ACB which bears his signature at point A. PW-7 deposed that the serial numbers of the GC notes recovered from the accused tallied with the serial numbers mentioned in the pre-raid report. They were taken vide seizure memo (Ex.PW-6/C), which he signed at point B. With regard to the taking of the hand and pant pocket wash of the accused, he, inter alia, stated:

It is correct that thereafter hand wash of both the hands of the accused was taken in some water like solution which turned into pink and the left side pant pocket wash of the accused was also taken which also turned into pink and that solution was transferred into six small empty clean bottles which were sealed by the Raid Officer with his seal and that marked papers slips were pasted on those bottles and my signatures were obtained thereon at point B and the pant of the accused was converted into a pullanda which was also sealed by Raid Officer and those bottles and pullanda of pant were taken into possession by Raid Officer vide seizure memo Ex.PW6/C which bears my signatures at point B. It is also correct

that DD entries Ex.PW1/A and Ex.PW1/B were taken into possession vide seizure memo Ex.PW7/D which bears my signatures at point A.

44. PW-7 deposed that he is XIIth Standard pass and that he always goes through the document before signing the same. He also deposed that I had signed all the documents after reading and understanding. I signed the documents when these were prepared. PW-7 also identified his signatures on the six sealed bottles - out of which three were sealed with the seal of RSK, and the rest were sealed with the seal of FSL. After identifying his signature on the paper slips of each of the bottles at point B, - he identified the bottles as the same bottles in which the Raid Officer collected the hands and pocket wash in his presence at the spot, PW-7 also identified the four GC notes of Rs.500/- which were used in the raid and were recovered from the pocket of the pant of the accused. PW-7 also identified the blue colour pant of the accused, after identifying his signature on the inner side portion of the left side pocket of the pant, and stated that this was the same pant which was taken into possession.

45. PW-9 the Raid Officer has supported the case of the prosecution to the hilt.

46. The pre-raid proceedings (Ex. PW-7/A) which has been signed by the complainant (PW-6) as well as panch witness (PW-7) corroborates the testimony of PW-6 and PW-7 taken note of hereinbefore, which in turn, supports the case of the prosecution. The post-raid proceedings (Ex.PW6/D) also fully corroborate the statements of PW-6 and PW-7 insofar as it supports the case of the prosecution. The said Ex.PW-6/D reads as follows:

At 6-45 P.M. we reached near Turkman Gate Police Post the vehicle has been parked there & Insp. S.S. Sandhu has been left in the vehicle. The complainant along with Panch Witness have been directed to proceed towards P.S. Chandni Mahal. I alongwith other members of raiding party are also following them in cognito. Sd/1/11/2002 Insp. At 6-55 P.M. we reached outside P.S. Chandni Mahal. The complainant & Panch Witness in Police station entered in Police station. We have taken position out side P.S. Chandni Mahal. Sd/1/11/2002 Insp. At 7-20 P.M. the Panch Witness Sh. Satpal Rohilla came out from Police station Chandni Mahal Building and gave the preappointed signal mentioned in raid report. Immediately I

alongwith members of raiding party followed him and reached in room No.5 at ground floor in P.S. Chandni Mahal. The complainant Sh. Mohd. Zakir was found sitting on cot alongwith another person in civil dress sitting on a chair, whose identity disclosed as ASI Mahipal Singh No.5289/C posted at P.S. Chandni Mahal. The Panch Witness pointed out towards ASI Mahipal Singh and informed that after demanding bribe from complainant, he received the same in his right hand & with the help of left hand kept the same in left side pocket of his (Mahipal Singhs) pant. Sh. Mahipal Singh ASI has been challenged by me after disclosing my identity for demanding & accepting bribe from complainant Sh. Mohd. Zakir. He got perplexed and kept mum. On my instructions the Panch Witness Sh.Satpal Rohilla recovered the bribe amount from left side pocket of pant worned by ASI Mahipal Singh, which were found to be Rs.2,000/- in the form of notes of Rs.500/- each, numbers of which have been tallied by the Panch Witness with those mentioned in this raid report, which tallied. Fresh solution of sodium carbonate in a clear glass tumbler have been prepared and right hand fingers of Sh. Mahipal Singh have been dipped in the colourless solution, which turned pink in colour, which has been transferred in 2 clear glass bottles marked as RHW-I & RHW-II respectively. Fresh solution of sodicum carbonate has been prepared in another clear glass bottle and left hand fingers of Sh. Mahipal Singh dipped therein. On doing so, the colourless solution turned pink in colour, which has been transferred in 2 clean empty glass bottles & marked as LHW-I & LHW-II respectively. Fresh solution sodium carbonate has been prepared in another clear glass tumbler. After taking out pant of ASI Mahipal Singh, the inner lining of left side pocket of pant dipped in above colourless solution of sodium carbonate, which turned pink in colour and has been transferred in 2 separate clear glass bottles marked as LSPPW-I & LSPPW-II respectively. All the aforesaid 6 bottles containing washes have been sealed with my seal of RSK with the help of cloth wrappers signed by complainant & Panch Witness. The inner lining of left side pocket of pant worn by ASI Mahipal Singh have been signed by Panch witness & complainant. The Pant has been kept in an envelope & sealed with seal of RSK. The complainant also confirmed the above version of Panch Witness. From the table of ASI Mahipal Singh one sheet, which was being written by him pertaining to case of complainant, when we raided in his room has been seized after getting signature of complainant & Panch witness

there-on. From the table of ASI Mahipal Singh the MLC No.103136 dt 29-10-2002 of Mohd. Zakir got medically examined vide DD No.5A dt 29-10-2002 P.S. Ch. Mahal, Delhi has been recovered which has been seized vide this Memo after getting signature of Panch Witness. Specimen seal impression of seal used in sealing have been taken on 2 separate sheets. From the facts & circumstances & statements of witness & complainant as above, ASI Mahipal Singh has committed offence u/s 7 & 13 of P.O.C. Act, 1988. The rukka for registration of case is being sent through Ct. Mahinder Singh No.1205/N in Maruti Van. After registration of case investigation he entrusted to Insp. S.S. Sandhu, who is present at spot. Sd./1/11/02

47. The post-raid proceedings (Ex. PW-6/D) is not a statement made to a Police officer. It is a memorandum recording the events which have transpired, and have been witnessed by those who have affixed their signatures in token of its correctness. Except the last part of the said Ex.PW-6/D, which records the inference that the accused had committed offence punishable under Section 7 & 13 of the P.C. Act - an inference drawn by the Police Officer, the earlier part of the said Ex.PW-6/D is not hit by Section 161 Cr.P.C. and it is a panchnama, which records the factum of demand and acceptance of the bribe by the accused, and the factum of its recovery amongst other things. Ex.PW-6/D corroborates the testimony of PW-6 & PW-7 taken note of hereinbefore, insofar as it supports the case of the prosecution.

48. Similarly, the seizure memo (Ex.PW-6/C), which records the seizure of the four GC notes of Rs.500/- each, six sealed bottles containing washes marked as LHW-I, II, RHW-I, II & LSPPW-I, II; one sheet written by the accused pertaining to case of the complainant; MLC dated 29.10.2002 of Mohd. Zakir, DD No.5A dated 29.10.2002 and pant of the accused after sealing in an envelope, and also the fact that the seal after use has been handed over to the panch witness PW-7 after taking its specimen seal impression on two separate sheets, is a memorandum recording the proceedings, and is not hit by Section 161 Cr.P.C. as it is not a statement to a Police Officer. The said seizure memo (Ex.PW-6/C) also corroborates the statements of PW-6 and PW-7 taken note of hereinbefore, insofar as they support the prosecution case.

49. I have already taken note of the contents of Ex. PW-6/D, the post raid proceedings/panchnama in para (46) above. In Valibhai Omarji (supra), the Gujarat High Court while dealing with interplay of Section 157 and 162 Cr PC observed as follows:

19. In Mohanlal Bababhai v. Emperor, 43 Bom LR163: (AIR1941 Bom 149) Beaumont, C. J.

and Sen. J., observed thus: "A panchnama is merely a record of what a panch sees. The only use to which it can properly be put is that when the panch goes into the witness box and swears to what he saw, the panchnama can be used as a contemporary record to refresh his memory."

As has been held in several cases Section 157 of the Evidence Act is controlled by Section 162 of the Code of Criminal Procedure and therefore if a statement, though falling under Section 157 of the Evidence Act, were also to fall under Section 162 of the Code, it would be Section 162 of the Code that would prevail and such a statement would be inadmissible. Reading Section 157 of the Evidence Act and Section 162 of the Code of Criminal Procedure together, it is clear that the word 'statement' in Section 157 of the Evidence Act has a wider connotation than the same word used in Section 162 of the Code. But in order that a previous statement of a witness falls under Section 162 of the Code, two conditions have to be fulfilled, viz., (i) that it be a statement to a police officer and (2) that it is made in the course of investigation under Chapter XIV, Criminal Procedure Code. The question therefore is whether a Panchnama is a record of a statement which falls within the ban of Section 162 of the Code?. In a case falling under Section 161 of the Penal Code or under Section 5 (i) (d) of the Prevention of Corruption Act, an offence thereunder is complete when an illegal gratification is accepted by an accused person. Generally a Panchnama produced in such a case falls into two parts viz., (i) the recording of what occurred before the acceptance of an illegal gratification and (2) what occurred at the time of the acceptance and subsequently. The first part of such a Panchnama obviously would not fall under Section 162 of the Code, even if it were a statement to a police officer because it cannot be said to have been made in the course of investigation of a cognizable

offence, no such offence having yet taken place. Does then the second part of the Panchnama fall under Section 162 of the Code?. As stated before, a previous statement of a witness complying with the conditions laid down in Section 157 of the Evidence Act is admissible. The exception is that if it fulfills the two conditions laid down in Section 162 of the Code, it becomes inadmissible thereunder, except for the limited purpose therein stated. The important words in Section 162 of the Code are "No statement made by any person to a police officer". Therefore the statement must be one to a police officer and unless it is to a police officer, it does not fall within the mischief of Section 162 of the Code. Therefore it is necessary that the statement in question must have the element of communication to a police officer. If a Panchnama is merely a record of facts which took place in the presence of panchas and of what the Panchas saw and heard, as observed in 43 Bom LR163: (AIR1941 Bom 149), but is not a record of a statement communicated to a police officer, it would be admissible under Section 157 of the Evidence Act and would not fall within the ban of Section 162 of the Code of Criminal Procedure. As its very name signifies, it is a document recording what the Panchas saw and heard. At the same time, if a Panchnama does contain a statement which amounts to a statement communicated to a police officer during the course of his investigation, it would fall within Section 162 of the Code. Therefore every time when a Panchnama is tendered in evidence, it would be the duty of the Court to ascertain whether any part of it falls within the mischief of Section 162 of the Code of Criminal Procedure and if it does fall, the Court should take out that portion from being admitted in evidence. It was urged, however, by Mr. Barot that in the instant case, the Panchnama was not recorded by the panchas themselves but its contents were dictated by them and it was the police officer investigating this case who wrote it out and kept the Panchnama in his custody until it was produced in the trial Court. The fact however that it was written out by the officer as dictated to him by the panchas would not, in our view, make any difference, for that is merely a mode in which the Panchnama is recorded, nor would the officer keeping that document with him make any difference. As held in *Santa Singh v. State of Punjab*, AIR 1956 SC526 the mere presence of a police officer when a statement is made does not by itself render such a statement inadmissible. So long as a Panchnama is a mere record of things heard and seen

by panchas and does not constitute a statement communicated to a police officer in the course of investigation by him, it would not fall within the mischief of Section 162 of the Code. This- very distinction appears to have been made in 1961-2 Guj LR664at page 673 of the report. Mr. Barot, in fact, was not able to point out any particular statement in the Panchnama which, according to the above test, would fall within the mischief of Section 162 of the Code. That being so the learned trial Judge was not in error in admitting the same in evidence and the contention raised by Mr. Barot must consequently fail.

(Emphasis supplied) 50. On the application of the aforesaid decision, I have no hesitation in concluding that Ex. PW-6/D i.e. post raid proceedings/panchnama as well as the seizure memo Ex. PW-6/C are not hit by Section 161 or 162 Cr PC, insofar as they do not purport to incriminate the accused and merely constitute record of the proceedings which took place, to which the complainant and the panch witness were witnesses.

51. The testimony of PW-9 the Raid Officer fully supports the case of the prosecution and corroborates the statements of PW-6 and PW-7 taken note of hereinabove.

52. The FSL report (Ex.PW-11/C) confirms that on chemical examination Exhibits RHW-I, LHW-I and LSPPW-I gave positive test for the presence of Phenolphthalein and Sodium Carbonate which, too, corroborates the case of the prosecution and the testimony of the PW-6, PW-7 and PW-9 insofar as they are relied upon by the prosecution and taken note of hereinabove. It stands corroborated that the accused handled and kept in his pocket the treated GC notes upon being given by the complainant (PW-6). It stands conclusively established by the link evidence that Exhibits RHW-I, LHW-I and LSPPW-I are the right hand, left hand and left side pocket wash samples of the accused collected at the time of the raid, as aforesaid. These positive results contradict the statement of the complainant (PW-6) that the money was given to some other person, other than the accused. In fact, this test result corroborates the post raid proceedings/panchnama (Ex PW-6/D), which records that the accused received the same in his right hand & with the help of left hand kept the same in left side

pocket of his (Mahipal Singhs) pant. It also contradicts the statement of the panch witness (PW7) that However, complainant took out those treated GC notes and put in the pocket of the accused.

53. The complainant PW-6 and panch witness PW-7, no doubt, turned partially hostile and were, therefore, cross-examined by the prosecution with the leave of the Court. However, it cannot be said that either of these two witnesses stood thoroughly discredited. Though, at times, both these witnesses did not support the case of the prosecution, they did testify with regard to the demand and acceptance of the bribe money by the accused as well as with regard to the pre-raid and post raid proceedings. It has to borne in mind that the accused is a police official. One cannot lose sight of the fact that a police officer holds a great deal of influence, particularly within the area falling in the jurisdiction of the police station where he is so posted. The complainant is an ordinary citizen, who appears to be a person of humble means. There was no reason or motive for the complainant to make a false complaint against the accused. Similarly, the panch witness too had no reason or motive to falsely implicate the accused. To the extent that PW6 and PW-7 deviated from the case of the prosecution, their testimonies are contradicted by the corroborative evidence, namely, the pre-raid and postraid proceedings; the testimony of PW-9 raid officer, and; the FSL report PW-11/C. Thus, that part of the testimony of PW-6 and PW-7, which does not support the case of the prosecution, is liable to be ignored. Clearly, PW6 sought to save the accused by seeking to create confusion with regard to the date of the incident/raid. However, it stands established by the evidence of PW-6 himself, that the complaint was given by him on 01.11.2002, as the complaint Ex PW-6/A bears that date. PW-7 also establishes that the complainant went to the ACB on 01.11.2002 and the complaint was recorded in his presence.

54. The argument that PW-7 was a stock prosecution witness, because he was present in the ACB even before the complainant (PW-6) made the complaint, has no merit either. A similar argument was raised by the appellant in Raj Kumar v. State, Crl. Appeal No.831/2008, decided on 26.03.2015 by this Court. The said submission was rejected by observing as follows:

The submission of Mr. Krishnan that Gurander Singh (PW-7) was a stock witness, since he admitted to be on duty in the ACB on the fateful day, i.e. 27.12.2000, and because he was present in the ACB even prior to the complainant (PW-6) arriving in the ACB, also has no merit. Merely because PW-7 had acted as a shadow/ panch witness in one other case, it does not make him a stock witness. Unless PW-7 acted as a shadow/ panch witness in numerous trap cases, and it were shown to the Court by leading evidence that in some other case he stood discredited and his testimony was not believed by the Court, in my view, the testimony of PW-7 could not be rejected by branding him as a stock witness. It is well-known that the general public does not like to get involved, as a witness in such like trap cases. Therefore, Government officers who enjoy security of service and status are assigned the duty to act as independent shadow/ panch witnesses. They are under no compulsion to depose in favour of the prosecution, and are free to depose according to their conscious with regard to the facts witnessed by them. Pertinently, PW-7 failed to identify the appellant/ accused in the present case. Had he been a stock witness, he would not have failed to identify the appellant/ accused in Court. This itself shows that PW-7 deposed truthfully and naturally without being concerned with the outcome of his testimony. PW-7 was not shown to have any animosity towards the appellant. In his cross-examination, no suggestion to this effect was given to PW-7. The appellant also did not lead any evidence in this regard.... ..

. This Court relied upon *Yakub Abdul Razak Memon Vs. State of Maharashtra*, (2013) 13 SCC1 wherein the Supreme Court observed:

1974. The panch witness Mohd. Ayub Mohammad Umar (PW72) could not be held to be a tutored witness or acting at the behest of the prosecution only on the ground that he had also been the witness in another case. It does not give a reason to draw inference that he was a stock panch witness, unless it is shown that he had acted in such capacity in a very large number of cases.

55. In relation to reliance placed by the accused on *Suraj Mal* (supra), firstly, I may observe that in a string of decisions, the Supreme Court has observed that the judgments in *Suraj Mal* (supra) and *Sitaram v. State of Rajasthan*, (1975) 2

SCC227 are decisions rendered in the facts of those cases, and the observations made therein were confined to the facts of those cases. In relation to Suraj Mal (supra), the following observations were relied upon before the Supreme Court. In our opinion, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The Supreme Court in *M. Narsinga Rao v. State of Andhra Pradesh*, (2001) 1 SCC691 observed in respect of these observations. In that case also the said finding depended upon the veracity of the testimony of the witnesses. But the contention raised by the learned counsel in this case on the point canvassed by him cannot find any support from the said decision either.

56. In any event, on facts, the decision in Suraj Mal (supra) does not come to the aid of the accused, as the case of the prosecution is not premised on mere recovery of the bribe money from the accused. There is primary as well as corroborative evidence with regard to the demand, acceptance and recovery of the bribe amount from the accused, as already discussed hereinabove.

57. The decision in Venkata Subbarao (supra) also has no application in the facts of this case. In this case, on facts, the Supreme Court found that the demand of illegal gratification by the accused had not been proved. There was a delay of 15 days, which was not explained by the prosecution, in filing the complaint and there were illegalities in the proceedings. The Court found the evidence of the complainant and other prosecution witnesses to be unreliable. The Trial Court acquitted the accused and that acquittal was reversed by the High Court.

58. In *Madan Mohan Lal* (supra), the Supreme Court reiterated the settled legal position that demand of illegal gratification is a sine qua non to constitute an offence under the PC Act. Mere recovery of tainted money is not sufficient to convict the accused, when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of amount as illegal gratification. Once again, I find that the decision in

Madan Mohan Lal (supra) cannot be pressed into service in the facts of the present case, since, the demand and acceptance of illegal gratification, as also its recovery, has been fully established.

59. The decision of this Court in T.C. Chawla (supra) also has no application in the facts of the present case. In T.C. Chawla (supra), the defence of the accused was that he had accepted the money from the complainant/contractor on account of another contractor, as the said amount was payable by the complainant on account of supply of badarpur sand by the other contractor. This Court believed the said explanation of the accused on the basis of the testimonies of the defence witnesses. However, in the present case, there is absolutely no explanation offered by the accused for receiving the amount of Rs.2,000/- from the complainant PW-6.

60. Parmanand (supra) also has no application in the facts of this case. In this case, the procedure adopted for taking the hand wash was faulty inasmuch, as, the fingers of the officials who took the hand wash had also been dipped in the solution. The recovery had been made from an open briefcase lying on the side table, and it was not established beyond reasonable doubt that the briefcase belonged to the accused.

61. In Prem Singh Yadav (supra), the Court came to the conclusion that the testimonies of PW-2, 3, 5 and 6 were not reliable and, that the defence version had created some doubt in the prosecution case. Recovery of tainted money alone was not sufficient to record conviction. Consequently, the accused was given the benefit of doubt. It is in these circumstances that the accused was acquitted by this Court. On facts, it cannot be said that the present case is the same as Prem Singh Yadav (supra).

62. In Hazari Lal (supra), the Supreme Court observed that there is no requirement to prove passing of money by direct evidence. It may also be proved by circumstantial evidence.

63. In Zakaullah (supra), the Supreme Court observed that the complainants evidence cannot be rejected merely because he was aggrieved against the

accused/bribe taker. The fact that the trap officer successfully trapped the accused, is no ground to conclude that he bore animosity against the delinquent. It was further held that acquaintance of the independent witness with the police, or the fact that he helped the police action would not, by itself, discredit the evidence of the independent witness. The Supreme Court observed that the evidence of the trap officer can be relied on, even without corroboration. It was further held that the non sending of the sample of solution used for conducting phenolphthalein test to the chemical examiner would not vitiate the trap. The Supreme Court, inter alia, observed as follows:

10. The necessity for "independent witness" in cases involving police raid or police search is incorporated in the statute not for the purpose of helping the indicted person to bypass the evidence of those panch witnesses who have had some acquaintance with the police or officers conducting the search at some time or the other. Acquaintance with the police by itself would not destroy a man's independent outlook. In a society where police involvement is a regular phenomenon many people would get acquainted with the police. But as long as they are not dependent on the police for their living or liberty or for any other matter, it cannot be said that those are not independent persons. If the police in order to carry out official duties, have sought the help of any other person he would not forfeit his independent character by giving help to police action. The requirement to have independent witness to corroborate the evidence of the police is to be viewed from a realistic angle. Every citizen of India must be presumed to be an independent person until it is proved that he was a dependent of the police or other officials for any purpose whatsoever. *Hazari Lal v. Delhi Administration*, (1980) 2 SCR1033: AIR 1980 SC873??.

64. In relation to the trap/raid officer, who was PW-4 in that case, the Supreme Court observed:

11. We must mind the fact that he had no interest against the respondent. But the verve shown by him to bring his trap to a success is no ground to think that he had any animosity against the delinquent officer. He made arrangements to smear the phenolphthalein power on the currency notes in order to satisfy himself

that the public servant had in fact received the bribe and not that currency notes were just thrust into the pocket of an unwilling officer. Such a test is conducted for his conscientious satisfaction that he was proceeding against a real bribe taker and that an officer with integrity is not harassed unnecessarily.

12. The evidence of such a witness as PW4 can be acted on even without the help of any corroboration vide *Prakash Chand v. State (Delhi Administration)*, (1979) 2 SCR30 and *Hazari Lal v. Delhi Administration*, (1980) 2 SCR1053??.

65. With regard to the phenolphthalein test, the Supreme Court observed:

13. that the said solution is always used not because there is any such direction by the statutory provision, but for the satisfaction of the officials that the suspected public servant would have really handled the bribe money. There is no material discrepancy in the evidence regarding preparation of recovery-memo and the minor contradiction mentioned by the learned single judge is not worth considering.

66. In *R. Jeevaratnam (supra)*, the Supreme Court referred to and approved the earlier decision of the same Court in *Raghubir Singh v. State of Punjab*, (1974) 4 SCC560. In *Raghubir Singh (supra)*, the Supreme Court held that the very fact that the accused was in possession of marked currency notes, when the allegation was that he demanded and received the amount as bribe, is *res ipsa loquitur*. The Supreme Court also referred to an earlier decision in *State of Andhra Pradesh v. C. Uma Mahesara Rao*, (2004) 4 SCC399. Referring to *Uma Mahesar Rao (supra)*, the Supreme Court in *R. Jeevaratnam (supra)* held:

that the only condition for drawing the presumption is that during trial it should be proved that the accused has accepted or agreed to accept any gratification.

67. It was further held that the aforesaid condition i.e. acceptance or agreement to accept any gratification need not to be proved only through direct evidence. Proof must be one which would induce a reasonable man to come to a particular conclusion. It was held that once it is proved that gratification has been accepted, the mandatory presumption under Section 20 must automatically arise.

68. In the light of the aforesaid discussion, since the demand, acceptance and recovery of illegal gratification of Rs.2,000/- by the accused stands conclusively established, this Court is bound to draw the presumption under Section 20 that the accused had obtained the said illegal gratification as a motive or reward for bringing about a settlement between the complainant and his uncle Abdul Gaffar in the exercise of his official functions. The accused has not set up any defence, much less a probable defence, to dislodge the said mandatory presumption. Consequently, the offences under Section 7 and Section 13(1)(d) of the PC Act stands established against the accused.

69. In the light of the aforesaid discussion, I am of the view that there is no merit in this appeal. The same is, accordingly, dismissed. The appellant shall surrender forthwith to undergo the remaining sentence. VIPIN SANGHI, J APRIL20 2015

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