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Anil Kumar Verma Vs. State

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Court : Delhi

Decided On : Apr-24-2015

Judge : Vipin Sanghi

Appellant : Anil Kumar Verma

Respondent : State

Judgement :

$~R-27. * IN THE HIGH COURT OF DELHI AT NEW DELHI + % Date of Decision:

24. 04.2015 CRL. A. 148/2009 ANIL KUMAR VERMA Through: versus ..... Appellant Mr. Davender Kumar, Advocate STATE ..... Respondent Mr. Lovkesh Sawhney, APP Through: CORAM: HON'BLE MR. JUSTICE VIPIN SANGHI VIPIN SANGHI, J.

(OPEN COURT) 1. The present appeal is directed against the judgment dated 22.01.2009 passed by the Special Judge, Delhi in CC No.145/08, titled State V. Anil Kumar Verma arising out of FIR No.12/2001 under Section 7 & 13 of Prevention of Corruption Act, 1988 (the Act), whereby the appellant was convicted of the offences under Section 7 and 13(1)(d) punishable under Section 13(2) of the Act, and was sentenced to undergo rigorous imprisonment for one year and a fine of Rs.2500/- under Section 7 of the Act, and in default of payment of fine, to undergo further simple imprisonment for a period of three months. In respect of

conviction under Section 13(1)(d) read with Section 13(2), he was sentenced to undergo rigorous imprisonment for one year with fine of Rs.2500/-, and in default of payment of fine, to undergo further simple imprisonment for a period of three months. Both the sentences were directed to run concurrently.

2. The case of the prosecution taken note of in the impugned judgment is to the following effect: A. That Sh. Kishan Lal Garg , father of complainant Sh. Ravinder Lal Garg was tenant in respect of first floor of premises No.C-39 Shivaji Park, Punjab Bagh, N. Delhi. Litigation was going on between the landlord and tenant and a decree for recovery of Rs. 65000/- was passed on 27.2.2001 in favour of landlord and against the tenant from the court of Ms. Navidita Anil Sharma Ld. ARC, Delhi. B. On 13.3.2001 complainant was informed by his wife that certain officials have come from the court for execution of decree and they are asking to vacate the premises. Thereafter, complainant came to his house and talked to accused Anil Kumar who was the ballif. Accused demanded bribe of Rs. 5000/- for non execution of the warrants, and when complainant expressed his inability to pay Rs. 5000/-, he agreed to accept Rs. 2000/-. On that day complainant was having Rs. 1000/- only, hence he gave Rs. 1000/to the accused and accused asked the complainant to pay the balance amount on 14.3.01 any time after 10.00 AM in room No.104, Tis Hazari Courts and accused threatened him that in case bribe amount was not paid then he would come for execution of the warrant on 14.3.2001. C. The complainant was against giving of bribe . He went to Anti Corruption Branch and got his complaint Ex. PW5/A recorded in presence of panch witness D. K. Sandhu. D. The prosecutions case further is that the complainant had brought 2 GC notes of Rs. 500/- each and handed over the same to the Raid Officer Insp. Makkhan Singh (PW7). The Raid Officer recorded the serial numbers of those GC notes in his pre raid report Ex. PW5/B. Raid Officer applied phenolphthalein powder on those GC notes and gave a demonstration to the panch witness and complainant by touching the hand of panch witness with those treated GC notes and took wash of hand of panch witness in the solution of sodium carbonate and that solution turned into pink. The solution was thrown away. Treated GC notes were given to the complainant who kept the same in the pocket of his shirt. Thereafter all of them washed their hands. Thereafter Raid Officer instructed panch witness to remain close with the complainant and to over

hear the conversation after being satisfied that bribe had actually been given, panch witness was asked to give a signal by hurling his hand on his head. The complainant was instructed to remain close to the panch witness and to do the transaction in such a manner that he would be able to see the transaction and hear the conversation. E. Prosecutions case further is that at about 1.45 PM the Raid Officer , complainant, panch witness, Insp. Veer Singh Tyagi along with other members of raiding party left Anti Corruption Branch in a government gypsy and reached at Tis Hazari Courts at 2.00 PM. The government vehicle was parked at some distance. Insp. Veer Singh Tyagi along with driver remained in the government vehicle. Complainant and panch witness left the vehicle, and Raid Officer along with members of the raiding party followed them by keeping a suitable distance. The complainant and panch witness reached room No.104 and the Raid Officer had taken suitable position nearby and started waiting for the pre assigned signal. He saw the complainant, panch witness and accused entering the canteen adjacent to the room. F. The prosecutions case further is that at about 2.35 PM the Raid Officer received pre determined signal from the panch witness, and he along with the raiding team immediately reached there. Panch witness told the Raid Officer that accused had demanded and accepted bribe of Rs. 1000/from the complainant. Raid Officer introduced himself as inspector from Anti Corruption Branch and challenged the accused and he offered that if accused wanted to take his search before the search of the accused is taken, he can do so, but the accused refused to do so and become perplexed. On the instruction of the Raid Officer, panch witness recovered Rs. 1000/- from right pant pocket of accused. The serial numbers of those GC notes were tallied with the serial numbers mentioned in the pre raid report and they were found to be same. Those recovered GC notes were taken into possession vide seizure memo (Ex. PW5/E). The right hand wash of the accused was taken in the colourless solution of sodium carbonate, which turned into pink. The solution so prepared was transferred separately in two empty, small clean bottles which were sealed with the seal of MS. Marked paper slip RHW I-II were pasted on those bottles after obtaining the signature of the panch witness and complainant. The right side pant pocket wash of accused was taken in similar manner in the solution of sodium carbonate, which also turned pink. The solution so prepared was transferred separately in two

empty, small clean bottles which were sealed with the seal of MS. Marked paper slip RPPW-I-II were pasted on those bottles after obtaining the signature of panch witness and complainant. The Raid Officer prepared the sample seal of MS on two papers. Seal, after use, was handed over to the panch witness. The pant of the accused was converted into a pulanda and those sealed bottles along with pulanda of pant were seized vide memo (Ex. PW5/D). Raid Officer drew the post raid proceedings (Ex. PW5/K). The Raid Officer prepared the rukka Ex. (PW7/A), and sent it to PS Anti Corruption Branch for registration of the case through constable Hari Parkash. Insp. Veer Singh Tyagi (IO) was called at the spot and Raid Officer handed over the custody of accused, case property, copy of rukka, raid report for investigation to him. Thereafter, IO prepared the site plan (Ex. P8/A) at the instance of complainant. He interrogated the accused and arrested him vide personal search memo (Ex. PW5/J). Accused was got medically examined at Aruna Asaf Ali Hospital and thereafter accused was taken to PS Civil Lines, where he was put in lock and Investigating Officer deposited the case property, personal search articles of the accused with MHCM PS Civil Lines . During the course of investigation, he collected the bio data of the accused and sent the exhibits to FSL for opinion and collected the result in due course of investigation. He sent the request along with requisite material to the competent authority for obtaining the sanction against the accused, and after completing the investigation filed the charge sheet in the court.

3. After complying with the provisions of Section 207 Cr. P. C. and after hearing the Ld. Addl. PP for the State and ld. Counsel for accused, charge was framed against the accused.

4. In order to prove its case prosecution examined 7 witnesses, viz.: (i) PW-1 Ravinder Dudeja, Administrative Sub Judge (Sanctioning Authority). (ii) PW-2 HC Phool Chand. (iii) PW-3 Bhagwat Sarup Sharma. (iv) PW-4 I.D. Bansal (v) PW-5 Dalip Kumar Sandhu (the Panch Witness) (vi) PW-6 Ravinder Garg (the Complainant) (vii) PW-7 Inspector Makkhan Singh (the Raid Officer) (viii) PW-8 Inspector Vir Singh Tyagi (the Investigating Officer) 5. Thereafter statement of accused was recorded u/s 313 Cr. P. C. He claimed to be innocent and falsely implicated in this case. The accused opted to lead his evidence in defence and he

examined Rohit Kumar s/o Late Deen Dayal as DW-1 - the son of the Decree Holder Smt. Raj Kumari, who accompanied the accused to the house of the complainant/ Kishan Lal Garg for execution of the decree for recovery of money by attachment of movables.

6. The submission of learned counsel for the appellant, firstly, is that there was no occasion for the appellant to demand any bribe from the complainant. He submits that the entire story of the prosecution that the accused met the complainant separately in the midst of the execution proceedings on 13.03.2001; accepted a part of the bribe from him, and; agreed to help the complainant by delaying the execution of the decree - for which he demanded a further bribe, is contrary to the record. Learned counsel has, in this regard, placed reliance on the execution proceedings, which are exhibited as Ex. PW-3/B (exhibited on 05.04.2004) and Ex PW- 4/B (exhibited on 04.12.2004). The execution proceedings run into 23 pages. Learned counsel submits that the appellant did not do, or omit to do, nor was the appellant planning to do any act, or omit to do anything in the discharge of his official functions to favour the complainant. In fact, the spot proceedings had been prepared contemporaneously on 13.03.2001 and on that basis, even the report had been prepared by the appellant bailiff even before the trap was laid.

7. Learned counsel submits that the said execution proceedings show that only a money decree had been passed against the judgement debtor, i.e. the father of the complainant Sh. Kishan Lal Garg in the sum of Rs.66,038/-. The warrants of attachment were issued on 08.03.2001. The schedule of assets, which were attached for the purpose of execution, enlisted the movable assets of the judgement debtor. The same was not a decree for possession. The complainant had claimed in his complaint that, the appellant had informed him that the same was a decree for possession - an unbelievable claim, considering that the complainant is an educated person and a seasoned litigant. The appellant proceeded to the house of the judgement debtor along with the decree holder Raj Kumari Nakra and the son of the decree holder (DW-1). At the said location, the daughter-in-law of the judgement debtor, i.e. the wife of the complainant was present. The judgement debtor was not available. The wife of the complainant called the judgment debtor over the telephone and asked the appellant/bailiff and

those accompanying him to wait till he arrives. The wife of the complainant then informed the complainant over the phone about the appellant- bailiff for execution of the decree. CRL. A. 148/2009 arrival of the appellant/bailiff that as soon as the complainant arrives, the parties will sit to sort out the matter. She stated that they did not have the money to satisfy the decree at that point of time. This statement itself shows that the complainants wife understood the decree to be only a money decree, and not a decree for possession of the premises. This also shows that the appellant did not mislead the wife of the complainant with regard to the nature of the decree.

8. On this, the decree holder gave her written statement that she does not accept the statement made on behalf of the judgement debtor. The decree holder insisted for execution of the warrants of attachment, in case the decretal amount is not paid.

9. The further proceedings recorded at the spot by the accused discloses that the complainant then arrived at the spot and gave his written statement, once again, reiterating that the judgement debtor was not available and that he would not permit lifting of the household items. He stated that the issue relating to execution of the decree would be sorted out with mutual talk, and sought time till 18.03.2001. However, the decree holder was not satisfied with the statement of the complainant, and insisted that the decree be executed forthwith to make recovery of money.

10. Upon the said insistence of the decree holder, the tempers at the site ran high, and the complainant (PW-6), his brother, and the wife of the complainant became angry and started abusing loudly. They pushed out the bailiff and others from the house and threatened that if any one even touches any of the household articles, the consequences would not be good. They also gathered their neighbours to help and support them. Then they locked their house and stood outside. All of them started to threaten the bailiff against proceeding to act to get the decree executed. They also stated that, under no circumstance, they would permit the lifting of the household articles. During the proceedings, the PCR van came with Head Constable Rohtas Kumar to the site. He examined the warrants of attachment and

stated that the local police station has been informed. Thereafter, Head Constable B.S. Dabas, and Constable Puran Mal Sharan came from P.S. Punjabi Bagh and examined the warrants, and stated that the bailiff may send his report to the executing Court. Thereafter they left.

11. The appellant also recorded at the spot, that at the site physical scuffle had become imminent. At this, the decree holder stated that she does not want a fight/scuffle to develop, and that she had not come for the said purpose. She gave her statement that attachment proceedings be halted, and that she would return with orders for breaking open the locks with police protection. She stated that since there was apprehension of breach of peace, the execution party may retract from the spot.

12. Thereafter, the report was drawn up by the bailiff, recording the entire incident, on the same day, i.e. 13.03.2001.

13. Learned counsel submits that the aforesaid proceedings do not support the case of the prosecution that the appellant sided with one or the other party in the execution proceedings. He submits that the complainant (PW-6) himself is a seasoned litigant, since he is involved in other cases as admitted by him in his cross-examination. He further submits that the complainant and his family members felt harassed and embarrassed due to the endeavour made by the decree holder and the appellant to execute the money decree. Consequently, a false complaint was made by the complainant against the appellant. Since the complainant (PW-6) was aggrieved by the discharge of his official duties by the appellant, the complainant (PW-6) sought to falsely implicate the appellant.

14. Learned counsel submits that in the complaint (Ex. PW-5/A), the complainant (PW-6) claimed that when he reached home, his wife informed him that the appellant had claimed that a decree for possession had been passed by the Court. It was also alleged that the accused had stated to the complainant that the decree for vacant possession had been passed by the Court. Learned counsel submits that, that could possibly not be the case, since the decree was a money decree with warrants of attachment of movables. He submits that so far as the complainant (PW-6) is concerned, this allegation (that the wife of the complainant

was informed that a decree for possession had been passed) was mere hearsay as this statement of the appellant was not alleged to have been made to the complainant, but to his wife. He submits that the wife of the complainant was not examined as a prosecution witness.

15. Learned counsel further submits that there was no question of the appellant informing the complainant (PW-6) that the Court decree is for grant of vacant possession of the tenanted premises to the decree holder, as it was a money decree only. Reference is made to the spot proceedings recorded by the appellant, which have been taken note of hereinabove.

16. The complainant (PW-6) had claimed in his complaint (Ex. PW-5/A) that the accused took the complainant (PW-6) away to have a private conversation with him, and then demanded a bribe of Rs.5,000/- for leaving, and giving Judgment Debtor/ complainant a few days reprieve so that they may be able to prefer an appeal against the judgment/ decree under execution. It was alleged that the accused after demanding a bribe of Rs.5,000/-, agreed to accept Rs.2,000/- for granting the aforesaid accommodation to the judgment debtor/ complainant, out of which the accused was paid Rs.1,000/-. The accused stated that the remaining amount of Rs.1,000/- be paid on the following day after 10:00 a.m. in Room No.104, Tis Hazari Courts, else he (the accused) will again return for executing the decree. Learned counsel submits that this assertion of the complainant (PW6) is contradicted by the record of the spot proceedings, as also the statement of Rohit Kumar (DW-1).

17. Learned counsel submits that Rohit Kumar (DW-1) has deposed that the appellant/bailiff remained with him from the time of arrival up to 5:00 or 5:15 p.m. continuously, and that he had no talk with any person. This contradicts the case of the prosecution that the appellant took the complainant away to a corner of the courtyard admeasuring 8/8 feet in the presence of a large number of police personnel and others to demand illegal gratification, and accepted Rs.1,000/- from him. In this regard, he has referred to the testimony of the complainant (PW-6), where he stated:

There is open terrace about 8 x 8 outside my house. All the public persons who were collected at the spot, were in the same terrace, in a room as well as in the staircase of my house. Accused took me in the terrace of the house where none was present. Accused took me to a terrace which was in front of my room in the staircase.

18. Learned counsel submits that if the appellant had connived with the complainant to defer the execution of the decree, or granted time to the judgement debtor before executing the decree so that the judgement debtor may approach the appellate court, the decree holder would have been the first person to be aggrieved by such conduct of the appellant, and would not have supported the defence of the appellant.

19. Learned counsel further submits that there is improvement made by the complainant (PW-6) in his examination in chief. The complainant (PW6), inter alia, stated:

Accused asked me to do his Sewa pani and then asked that if I had brought the agreed money (bribe). Accused also demanded a party of whisky. I replied in affirmative. I took out those treated GC notes from my shirt pocket and handed over to the right hand of the accused and kept the same in his right pocket of his pant.

20. However, the post-raid proceedings (PW-5/K) are silent about the demand of Sewa Pani or whisky by the accused. Learned counsel submits that in the light of the above evidence, the complaint (Ex.PW-5/A) stands falsified and the complainant (PW-6) completely discredited.

21. Learned counsel further submits that the panch witness (PW-5) has swung from one end to another, and he is completely discredited. The panch witness (PW-5), during his examination-in-chief had, firstly, stated that he could not hear the conversation which took place between the complainant (PW-6) and the accused. Thus, the panch witness was not a witness to any demand for bribe being made by the accused. Secondly, he stated the complainant (PW-6) thrust the money inside the right side pant pocket of the accused, and thereafter the

money was got recovered from the pocket of the accused by the panch witness (PW-5) under the directions of police. Thus, there was no conscious or voluntary acceptance of the bribe amount by the accused. Since the panch witness (PW-5) did not support the case of the prosecution, with the leave of the Court, he was permitted to be cross examined by the prosecutor. At this stage, he stated as follows:

I also recall that Ravinder started talking with Anil Verma about court order and met Anil Verma and Anil Verma told Ravinder Garg that he (Anil Verma) could give five days time to him and he could get the court order stayed with the help of his advocate. I also recall that during conversation Ravinder Garg told Anil Verma that he had brought Rs.1,000/- as asked for by him. I also recall that on this Anil Verma started saying that Rs.1,000/- was less amount and it will not do (isse baat nahi banegi) and he demanded Rs.1500/- (kam se kam Rs.1500/hone chahiya). On this complainant told that he has Rs.1100/only. I also recall that on this Ravinder Garg took out two GC notes from his right pocket of the shirt and handed over the same to Anil Verma who took the currency notes with his right hand and put the same in the right pocket of his pant.

22. On cross examination by the accused, the panch witness (PW-5) denied the suggestion that the complainant (PW-6) forcibly put the money in the right pant pocket of the accused. However, he also stated It is correct that the accused had not demanded any money from the complainant but the complainant had himself offered the money.

23. Learned counsel submits that there is serious contradiction and variation in the testimony of the panch witness (PW-5) which renders him unreliable and he stands discredited.

24. On the other hand, the submission of learned APP is that in the present case, demand, acceptance and recovery of bribe has been established. He submits that, firstly, there is no explanation as to why the appellant accompanied the complainant (PW-6) and the panch witness (PW5) to the canteen. The accused had no business to interact with the complainant, since, it is not his case that he knew the complainant (PW-6) - except in relation to the execution proceedings

which took place on the previous day. Secondly, it is submitted that if money had been thrust into the pant pocket of the accused by the complainant (PW-6) - as earlier deposed by the panch witness (PW-5) , the hand wash of the accused, of both his hands, would not have turned positive, as is the case. This clearly shows that the appellant had handled the bribe money and himself put it into his pocket. He submits that there was conscious acceptance of the bribe by the appellant. He further submits that the panch witness (PW-5), during his cross examination by the APP, had supported the case of the prosecution, which is also corroborated by the other link evidence, namely, the pre-raid and post-raid proceedings, and the FSL report regarding the hand wash.

25. Having heard learned counsels, perused the impugned judgment as well as closely examined the evidence on record, I am of the view that the appellant has been able to raise sufficient doubt in the mind of the Court to secure his acquittal.

26. In State of UP vs Zakaullah, (1998) SCC (Crl.) 456, while commenting on the aspect of reliability of the complainants evidence in a case under the Act, the Supreme Court observed as follows:

6. Complainants evidence was jettisoned on the mere ground that since he had a grouse against the delinquent public servant he might falsely have implicated the latter. Such a premise is fraught with the consequence that no bribe giver can get away from such stigma in any graft case. No doubt PW5 would have aggrieved by the conduct of the respondent. The very fact that he lodged a complaint with the Anti- Corruption Bureau is reflective of his grievance. Such a handicap in his evidence may require the court to scrutinise it with greater care, but it does not call for outright rejection of his evidence at the threshold. A pedantic approach rejecting the evidence of a complainant simply on the premise that he was aggrieved against the bribe-taker, would only help corrupt officials getting insulated from legal consequences.

(emphasis supplied) 27. Thus, though the complainants evidence cannot be rejected on the mere ground that since he had a grouse against a delinquent public servant, he might have falsely implicated the latter, at the same time, the handicap qua the evidence of the complainant may require the Court to scrutinise

it with greater care, but it does not call for outright rejection of his evidence at the threshold. It is in this light that the evidence of the complainant needs examination.

28. The complaint in question (Ex.PW-5/A) itself discloses several inaccuracies and falsities and makes it suspect. In the complaint, the complainant (PW-6) claimed that when he reached home, his wife informed him that the appellant had claimed that the Court had passed a decree for possession in respect of the premises under the tenancy of Kishan Lal Garg. However, the wife of the complainant was not produced as a prosecution witness. The disclosure allegedly made by the wife of the complainant to the complainant (PW-6) being mere hearsay remained unsubstantiated on the record. Moreover, the spot proceedings also demonstrate (as taken note of in para 7 above) that the wife of the complainant was aware of the fact that the decree was a money decree with warrants of attachment, and not a decree for possession. The spot proceedings recorded by the appellant bailiff even before the arrival of the complainant (PW-6) at the spot, on the basis of the interaction which the appellant had that the complainants wife, does not reflect that the appellant had claimed that a decree for possession had been passed in respect of the premises. It appears improbable that the appellant - a bailiff, would claim that a decree for possession had been passed in respect of the residential premises of the complainant, when only a money decree had been passed with issuance of warrants of attachment of movables.

29. The claim made by the complainant (PW-6) in his complaint (PW- 5/A) that the accused took the complainant away to have a private conversation with him and then demanded a bribe of Rs.5,000/- for leaving, and giving the judgment debtor a few days reprieve so that they may prefer an appeal from the judgment/ decree under execution, is also highly suspect in the light of the evidence of Rohit Kumar (DW-1), who deposed that the appellant/ bailiff remained with him from the time of arrival up to 05:00 or 05:15 P.M. continuously and that he had no talk with any person.

30. Even otherwise, it appears highly unlikely that when the bailiff is accompanied by the decree holder, as well the son of the decree holder, at the time of execution

of the decree for recovery of money with warrants of attachment, the bailiff would strike a deal with the judgment debtor to soft pedal the execution proceedings in broad day light; in an open courtyard, and; particularly when the son of the decree holder (DW-1) categorically stated that the bailiff remained with him from the time of arrival up to 05:00 or 05:15 P.M. continuously and that he had no talk with any person. The complainant claimed that the said demand and acceptance of partial bribe took place at an open terrace about 8 feet 8 feet outside his house. The complainant (PW-6) stated that all the public persons, who had collected at the spot were spread out on the same terrace; in the room; as well as in the staircase of his house. In these circumstances, it is highly suspect that the appellant could have found a private place to negotiate a deal with the complainant (PW-6), make a demand, and; even accept Rs.1,000/- from him.

31. The spot proceedings recorded by the appellant, in no way, suggests that the appellant, while acting as a bailiff, showed reluctance from executing the money decree by attaching the movable assets of the judgement debtor. The spot proceedings show that when, on the demand of the decree holder, the appellant-bailiff sought to proceed with the execution, tempers ran high and the complainant, his wife and his brother became enraged and started hurling abuses. They even threatened the appellant bailiff that if any of the household articles are even touched, the consequences would not be good. The proceedings recorded at the spot show that when it became eminent that a physical scuffle could break up, the decree holder herself stated that the attachment proceedings be halted, since she did not want a fight/ scuffle to develop. She stated that she would return with orders for breaking open the locks with police protection. Thus, the claim made by the complainant that the attachment proceedings were warded off by making partial payment of bribe to the appellant of Rs.1,000/- at the spot, is contradicted by the spot proceedings themselves.

32. It is equally pertinent to note that the appellant had already prepared the complete report on the basis of the spot proceedings for submission before the Court when the trap laid by the Raid Officer was implemented and the recovery of the spot proceedings and the report prepared by the appellant was effected from the appellant. (PW-5), the panch witness, inter alia, deposes some documents

consisting of register were also seized vide memo Ex.PW-5/F which also bears my signatures at point A and the documents are Ex. PW-3/B and Ex.PW-5/G. The report made on the basis of the spot proceedings preceded the implementation of the trap. Thus, the appellant had already prepared the report on the basis of the spot proceedings and were true to the spot proceedings. There was no deliberate deviation or discrepancy noticed in the report prepared by the appellant/ bailiff vis-a-vis the spot proceedings.

33. The complainant (PW-6) admitted in his cross examination that he was facing a trial under Section 420 I.P.C. and Sections 63/65 of the Copyright Act. This fact itself may not discredit the complainant, but this is certainly a factor which would be taken into consideration in deciding whether or not the complainant is a creditworthy witness. There are two vital aspects on which the testimony of the complainant (PW-6) stands contradicted. The first is with regard to the appellant demanding, and his paying bribe to the appellant on the spot on 13.03.2001. The complainant (PW-6) claimed that there were 40-50 people present at the site when the decree was sought to be executed. If the complainant (PW-6) is to be believed, in the presence of so many people, apart from the decree holder and her son DW-1, the appellant demanded and accepted partial bribe of Rs.1,000/- from the complainant in broad daylight. By itself, this testimony of the complainant appears to be farfetched and unbelievable. Coupled with this is a fact that Rohit Kumar (DW-1) has deposed that the appellant/bailiff remained with him from the time of his arrival upto 5:00 or 5:15 p.m. continuously, and that he had no talk with any person. As observed, had the conduct of the appellant been partisan against the decree holder (on account of payment of partial bribe amount of Rs.1,000/- at the spot on 13.03.2001), the decree holder and her son (DW-1) would have not only protested, but would have themselves alleged complicity between the complainant and the appellant. But that is not the case. DW-1 has completely supported the defence of the appellant, and there is hardly any challenge raised by the prosecution in his cross-examination.

34. The second aspect on which the testimony of complainant (PW-6) is seriously contradicted is the aspect of tender and acceptance of the bribe money by the appellant at the time of raid. Whereas the complainant (PW6) claimed that the

appellant/accused asked him to do sewa pani and then asked if the complainant had brought the agreed money (bribe), and he also demanded a party of whisky, whereafter the complainant took out the GC notes from his shirt pocket and handed over the same into the right hand of the accused, who kept the same in his right pocket of his pant, the panch witness (PW-5) stated in his examination in chief:

thereafter Ravinder Garg, however, thrushed (sic thrusted) money inside the right side pocket of the pant of the accused and thereafter the money was got recovered by me from the pocket of the accused at the direction of the police. When the complainant put money in the pocket of the accused, I gave signal to the members of the raiding party by moving my hand over my head to all members of the raiding party present in the spot and the money was recovered by me from the right side pocket of the pant of the accused . . ... 35. The panch witness (PW-5) also stated that there was a crowd being lunch hours, and as such talks between the accused and the complainant could not be heard properly. Thus, the panch witness in his examination in chief did not prove either the verbal demand for bribe, nor its conscious and voluntary acceptance by the accused. In fact, the examination in chief of the panch witness shows that the money was thrusted into the pocket of the appellant by the complainant (PW-6), whereafter the same was recovered in the presence of the raiding party. However, upon the panch witness being cross-examined by the learned APP, he changed his version substantially. He, inter alia, stated that the complainant and the appellant started to talk about the Court order and that the appellant told the complainant (PW-6) that he could give him five days time to get the Court order (decree) stayed with the help of his advocate. He stated that during the conversation between the complainant and the appellant, the complainant informed the appellant that he had brought Rs.1,000/-, as asked for by him. On this, the appellant started saying that Rs.1,000/- was less amount and it will not do (isse baat nahi banegi) and he demanded Rs.1,500/- (kam se kam 1500 hone chahiye). He further stated that the complainant took out the GC notes from his right pocket of the shirt and handed over the same to the appellant, who took currency notes in his right hand and put the same in the right pocket of his pant.

36. Here I may observe that the conversation that the appellant demanded Rs.1,500/- (kam se kam 1500 hone chahiye) or that Rs.1,000/- was less amount and it will not do (isse baat nahi banegi) is not recorded in the postraid report (Ex.PW-5/K) which records the statement of, inter alia, the panch witness. At the same time, the right hand wash of the appellant turned pink which showed that the appellant did handle the currency notes with his right hand. The panch witness (PW-5) also denied the suggestion given on behalf of the appellant that the complainant (PW-6) forcibly put the money in the right pant pocket of the appellant/ accused. At the same time, he stated that it is correct that accused had not demanded any money from the complainant but the complainant had himself offered the money. The panch witness (PW-5) explained the contradiction in his earlier statement with the case of the prosecution by claiming loss of memory on account of passage of time.

37. The aspect that needs consideration is, as to which of the two versions of the panch witness (PW-5) should be preferred in the context of the other facts & circumstances of this case. On the one hand, the fact is that the subsequent testimony (upon cross-examination by the learned APP) of the panch witness is substantially corroborated by the testimony of the complainant (PW-6) also by the pre-raid proceedings (Ex.PW-5/B), postraid proceedings (Ex.PW-5/K) and the CFSL report in relation to the handwash (Ex.D-10/2) while on the other hand, the earlier testimony of PW5 (given during examination-in-chief), which does not conclusively establish the offences under Section 7/ 13(1)(d) of the PC Act is corroborated by the spot proceedings and the report prepared by the appellant (Ex.PW-3/B).

38. Considering the fact that the appellant-bailiff does not appear to have either favoured, or acted with a view to favour the complainant in future, in relation to the execution proceedings, I prefer to accept the testimony of the panch witness rendered in his examination-in-chief - which is also corroborated by Rohit Kumar (DW-1), in as much, as DW-1 states that the appellant did not have any conversation with the complainant separately on the date of the raid, i.e. 13.03.2000. In my view, the aforesaid aspects create sufficient amount of doubt in the mind of the Court with regard to the commission of the offence, and benefit of

the doubt must go in favour of the appellant/ accused. In these circumstances, the complaint and testimony of the complainant have to be taken with a pinch of salt, since his credibility has also been assailed by bringing on record the fact that he was facing a case, inter alia, under Section 420 IPC, which involves a moral turpitude.

39. It is well-settled that a mere positive Phenolphthalein test is not conclusive proof of the fact that there is demand and acceptance of illegal gratification. In Zakaullah (supra), the Phenolphthalein solution/ handwash was not sent for forensic examination. The Supreme Court held that the same is not fatal to the case of the prosecution. The Supreme Court held that the Phenolphthalein test is done, not because there is a statutory requirement, but for the satisfaction of the officials that the suspect public servant had really handled the bribe money. Thus, a mere positive Phenolphthalein test/ handwash report, by itself, is not conclusive of either demand or acceptance of the illegal gratification by the accused. The positive Phenolphthalein test/ handwash only shows that the treated money was touched by the accused, and nothing more. It does not establish that a demand for bribe was made; the complainant offered the same to the accused; the accused accepted the same in his hand or hands and placed the same in his pocket consciously with a view to accept the bribe.

40. As noticed above, in my view, the spot proceedings and the report prepared on the basis of the spot proceedings by the appellant-bailiff in relation to the execution in question, does not suggest that the appellant carried out any act, or omitted to do anything in discharge of his official functions, so as to favour the complainant.

41. The possibility of the complainant harbouring a grudge against the appellant, on account of his discharging his official duty by seeking to execute the money decree by attachment of movables - which lead to distress, harassment and loss of face to the complainant, cannot be ruled out. It also cannot be ruled out that the complainant preferred the complaint with a view to trap the appellant/ bailiff so as to derail the execution proceedings and to teach the appellant a lesson. This possibility has to be appreciated in the light of the fact that the appellant is himself

an accused in a case under Section 420 IPC and would, thus, be aware of the manner in which the litigation could be handled with a view to delay the same.

42. The fact that the appellant accompanied the complainant to the canteen during the lunch hour does show lack of discipline on his part, but it also shows that he took the complainant/ went with the complainant at a rush hour into a public place - full of people. The transaction of giving and taking of bribe would, normally be undertaken in secrecy since it involves illegality and immorality.

43. The Trial Court, in my view, has not appreciated the evidence - particularly the spot proceedings and the report prepared by the appellant prior to the laying of the trap; the evidence of DW-1 and the contradiction in the complaint and the spot proceedings, which has led to misappropriation of evidence and consequent miscarriage of justice. Accordingly, the present appeal is allowed and the impugned judgment is set aside. The appellant stands acquitted. VIPIN SANGHI, J APRIL24 2015 sr

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