

Vinod Kumar Garg Vs. State

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Court : Delhi

Decided On : Jan-07-2009

Reported in : 2009CriLJ3224; 156(2009)DLT603

Judge : Mool Chand Garg, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 5A, 5(4), 7, 13, 13(1), 17, 19(1), 19(3), 20, 23(2) and 27; Evidence Act - Sections 114 and 133; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 8, 161, 173, 190, 190(1), 193, 195 to 199, 313, 374 and 537; [Prevention of Corruption Act, 1947](#)

Appeal No. : Crl. A. No. 286/2002

Appellant : Vinod Kumar Garg

Respondent : State

Advocate for Def. : Pawan Sharma, Adv.

Advocate for Pet/Ap. : Anil Kumar Gupta,; Arun Birbal,; Rajpal Singh and;

Disposition : Appeal dismissed

Judgement :

ORDER

Whereas it is alleged that Sh. Vinod Kumar Garg while functioning as Inspector, DESU (now DVB) office Seelampur, Delhi, a public servant in the discharge of his

official duty demanded Rs. 2000/- as illegal gratification from Sh. Nand Lal S/o Shri Megh Raj r/o H. No. 341/20, Mangal Sain Building, Bagh Kare Khan, Delhi-110007 in consideration for installing an electric meter at shop No. A-2, DSIDC Welcome Colony, Seelampur, Delhi, without proper formalities. Sh. Vinod Kumar Gard, Inspector, DESU (now DVB) office Seelampur, delhi, demanded, accepted and obtained Rs. 500/- (second instalment) as illegal gratification from the complainant. Whereas the said act of Inspector, Shr. Vinod Kumar Gard DESU (now DVB), Seelampur Office, Delhi constitute an offence punishable under Section 7/13 POC Act No. 49 of 1988. Whereas I, Navin Chawla, Chairman, DVB, New Delhi being the authority competent to remove Sh. Vinod Kumar Garg DVB office Seelampur, Delhi from office/services after fully and carefully examining the material before me in regard to the said allegation and circumstances of the case consider the said Inspector, Vinod Kumar Garg, DVB Office Seelampur, Delhi be prosecuted in the Court of Law for the said offence/offences. Now, therefore, I, (Navin Chawla, Chairman DVB, Delhi do hereby accord sanction under Section 19(1)(C) OF THE Prevention of Corruption Act, 19 for prosecution of said Inspector, Vinod Kumar Garg, DVB office Seelampur, delhi for the said offence/offences any other offences punishable under provisions of law in respect of the acts aforesaid and for taking cognizance of said offence y a Court of competent jurisdiction (NAVIN CHAWLA) Chairman Delhi Vidyut Board Shakti Bhawan, Nehru Place New Delhi

12. PW1 in his testimony has deposed that the sanction order was passed by him after fully and carefully examining the allegations contained in the material placed before him and in the circumstances of the case which persuaded him to grant prosecution of Vinod Kumar Garg the appellant herein. Thus, there is no infirmity in the order granting sanction and there is also no need to refer to the other Judgments cited by the parties on this point.

13. Regarding Motive, demand and acceptance of bribe money PW2 Shri Nand Lal the complainant has stated that in the year 1994 he hired an industrial shed in DSIDC Welcome Colony Seelampur, Delhi from Anil Ahuja. On this point there is no cross-examination of this witness. Except giving a suggestion that he has not taken any rent receipt which has been denied by the witness. He also deposed

about the demand made by one Inspector Yadav earlier to whom he also made an application for the electricity meter and who was transferred and replaced by the appellant. On this point also there is no cross examination. He also deposed that the appellant (accused) present in Court told him to move an application for providing meter of electricity and also asked him to use the electricity without meter for which he demanded bribe of Rs. 2000/-. This addition of permitting him to use the electricity without meter does not take away his complaint nor can it be termed as material contradiction. He also categorically stated 'I showed my inability to give Rs. 2000/- in lump sum but I agreed and showed my willingness to give the said amount in installment of Rs. 500/-. The accused agreed to this proposal of installment.'. The witness has stood by his complaint ExPW2/A signed by him. He also deposed as to how the trap was laid and how the money was handed over and recovered from the pocket of the appellant/accused kept in a polythene pack Ex.P-8 which when treated with phenolphthalein powder turned pink. He has also deposed that the money was kept in the pocket of the appellant at his asking. His testimony shows that the witness has stood by his basic averment that Rs. 500/- were passed over to the appellant in accordance with the trap plan laid upon the appellant and that the amount was recovered from the appellant. He also deposed about the presence of the other trap witnesses who also appeared in the witness box, namely, PW3 who has also corroborated his version. Further, the bottle which was sealed with the seal of RSY was deposited on the same day in the office of CFSL which gave the positive test of phenolphthalein and Sodium Carbonate as per the report prepared by PW4. There is no cross-examination of PW4 that no such bottle was deposited. The suggestion given to him that the chemical examination was done by his assistant has been denied by him. PW5 who investigated the matter as an Inspector and later became ACP also deposed on the same line. He has also corroborated the entire story as deposed by the complainant. It is a matter of record that no evidence in defence has been led by the accused/appellant nor he has stated anything in his statement under Section 313 Cr.PC about any enmity of the complainant with him. He has also not stated as to why the complainant has deposed against him. In fact, when statement of PW2 Nand Lal regarding taking of a DSIDC shed from Anil Ahuja was put to him, he only stated I do not know. Similarly, with regard to the evidence of

the PW 2 having made a complaint to the Anti-corruption Branch, he only stated I do not know.

14. The Special Judge has dealt with the evidence which came on record and observed that three witness, namely, PW2 the complainant, PW3 one of the panch witness member of the raiding party and PW5 have corroborated each other's testimony by stating that the tainted money was kept in a polythene pack by the complainant at the asking of the accused (appellant) and the polythene pack vide exhibit No. P8 was recovered from the right side pockets of the accused (appellant) which contained tainted money which were the same notes which were given to the appellant for the trap. Thus the trial court has rightly observed that keeping of the polythene pack in the right side pocket of the accused is a definite circumstance which points out against the accused and it is a clear implication that he accepted the money. It may be observed here that he accused has not examined any evidence in defence to prove that no such incident took place in the shop where the complainant has deposed having met the appellant and having talked about the bribe. The Special Judge rightly observed; that it is common in trap cases that the witnesses often make intentional deviation with a view to save the accused. But in the present case the polythene pack which was kept in the pocket of the appellant at his instance contained the bribe money which was recovered from him goes to show that the appellant accepted the bribe money which raises a presumption against him under Section 20 of the Prevention of the Corruption Act. I may also observe that the appellant has not come out with any case that he was not working as an Inspector in DESU or was not responsible for providing meter connection in the DSIDC shed in the relevant area at the time when the incident has taken place. Thus the observation of the Special Judge that the accused has failed to rebut the said presumption does not call for any interference. Thus, I do not agree with the learned Counsel for the appellant that it is not a case where presumption under Section 20 ought to have been raised and I say that it was rightly raised. Having examined the record I also do not find merit in the contentions of the appellant that there was any material contradiction in the testimony of PW 2,3 and 5 so as to hold their testimony inadmissible in evidence or to support the defence. The Judgments cited by the appellant are thus of no consequence.

15. Coming to the next submission of the appellant that the complainant is an accomplice being a bribe giver and, thus, was not an independent witness, I would refer to the observations made by the Apex Court and this High Court which are relevant to the facts before me.

16. In the case of *M.O. Shamshudhin v. state of Kerala* reported in : (1995)3SCC351 where even though it is said that a bribe giver, is in the nature of an accomplice, it is also stated that as per the Act the complainant is the person who gives bribe in technical and legal sense. Because in every trap case where the complaint is filed there must be a person who has to give money to the accused which in fact is the bribe money which is demanded and without that the trap cannot succeed. It would also be appropriate to take note of some of the observations made in this case, 10. No doubt P.W. 2 has been treated hostile but we see no reason to reject the evidence of P.W. 1 who is the main witness regarding the demand of bribe and the acceptance of the same by A-2 on behalf of A-1 as directed by A-1. Learned Counsel, however, submitted that there is no corroboration to the evidence of P.W. 1 who is in the nature of an accomplice regarding the demand.

11. Since this is an argument which is frequently put forward in all cases of bribery, we would like to examine the scope, nature and extent of corroboration that is necessary in such cases. The word ``accomplice`` is not defined in the Evidence Act. However, it is accepted that the word is used in its ordinary sense which means and signifies a guilty partner or associate in a crime. Illustration (b) to Section 114 in a way cautions the court to bear in mind the presumption that an accomplice is not worthy of credit unless he is corroborated in material particulars. Section 133 of the Act, however, declares that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an accomplice. The relation between Section 133 which is a rule of law and Illustration (b) to Section 114 which is a rule of prudence has been the subject of comment in a large number of decisions. However, it has emerged that a conviction based on the uncorroborated testimony of an accomplice is not illegal though an accomplice may be unworthy of credit for several reasons. Reading Section 133 and Illustration (b) to Section 114

of the Evidence Act together the courts in India have held that while it is not illegal to act upon the uncorroborated testimony of the accomplice the rule of prudence so universally followed has to amount to rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused. The reasons for requiring corroboration of the testimony of an accomplice are that an accomplice is likely to swear falsely in order to shift the guilt from himself and that he is an immoral person being a participator in the crime who may not have any regard to any sanction of the oath and in the case of an approver, on his own admission, he is a criminal who gives evidence under a promise of pardon and supports the prosecution with the hope of getting his own freedom.

12. Now confining ourselves to the case of bribery it is generally accepted that the person offering a bribe to a public officer is in the nature of an accomplice in the offence of accepting illegal gratification but the nature of corroboration required in such a case should not be subjected to the same rigorous tests which are generally applied to a case of an approver. Though bribe givers are generally treated to be in the nature of accomplices but among them there are various types and gradation. In cases under the Prevention of Corruption Act the complainant is the person who gives the bribe in a technical and legal sense because in every trap case wherever the complaint is filed there must be a person who has to give money to the accused which in fact is the bribe money which is demanded and without such a giving the trap cannot succeed. When there is such a demand by the public servant from a person who is unwilling and if to do public good approaches the authorities and lodges complaint then in order that the trap succeeds he has to give the money. There could be another type of bribe giver who is always willing to give money in order to get his work done and having got the work done he may send a complaint. Here is a *particeps criminis* in respect of the crime committed and thus is an accomplice. Thus there are grades and grades of accomplices and therefore a distinction could as well be drawn between cases where a person offers a bribe to achieve his own purpose and where one is forced to offer bribe under a threat of loss or harm that is to say under coercion. A person who falls in this category and who becomes a party for laying a trap stands on a different footing because he is only a victim of threat or coercion to which he was

subjected to. Where such witnesses fall under the category of ``accomplices'' by reason of their being bribe givers, in the first instance the court has to consider the degree of complicity and then look for corroboration if necessary as a rule of prudence. The extent and nature of corroboration that may be needed in a case may vary having regard to the facts and circumstances.

15. From the above resume of various decisions the following principles are deducible. Section 133 of the Evidence Act lays down that an accomplice is a competent witness against an accused person. The conviction based on such evidence is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. However, there is a rider in illustration (b) to Section 114 of the Act which provides that the court may presume that the accomplice is unworthy of credit unless he is corroborated in material particulars. This presumption is in the nature of a precautionary provision incorporating the rule of prudence which is ingrained in the appreciation of accomplice's evidence. Therefore the courts should be guarded before accepting the accomplice's evidence and look for corroborating evidence. The discretion of the court upon which the rule of corroboration rests must be exercised in a sound and reasonable manner. Normally the courts may not act on an uncorroborated testimony of an accomplice but whether in a particular case it has to be accepted without corroboration or not would depend on an overall consideration of the accomplice's evidence and the facts and circumstances. However, if on being so satisfied the court considers that the sole testimony of the accomplice is safe to be acted upon, the conviction can be based thereon. Even if corroboration as a matter of prudence is needed it is not for curing any defect in the testimony of the accomplice or to give validity to it but it is only in the nature of supporting evidence making the other evidence more probable to enable the court to satisfy itself to act upon it.

17. The aforesaid question was also dealt with in a judgment delivered in the case of State v. P.K. Jain and Anr. as reported in 2007 VI AD Delhi 403 by a Judge of this Court, in the following words:

10. I consider that observations of learned A.S.J brandishing the complainant in a trap case as accomplice amounts to discrediting the criminal justice system itself and portrays that the criminal justice system cannot respect the witnesses. This country is facing unprecedented rise in corruption. Situation has come to a stage that MCD officials, due to the corrupt practices, have turned the whole city into a slum by allowing all types of unauthorized construction, encroachment, squatting over public land. Engineers of local body who were supposed to check the unauthorized construction and encroachment of the public land, encroachment of roads, encroachment of pavements, turn a blind eye to all this, since their pockets are warmed and palms are greased. Similarly the observation of the trial Court that complainant and his son are interested witnesses and not trust worthy, is unfortunate. In case of a legitimate trap, the persons and police officials taking part in trap, in no sense can be said to be accomplice or un-credit worthy witnesses so that their evidence would require, under law to be corroborated by independent witness. The rule of corroboration is not a rule of law. It is only a rule of prudence and the sole purpose of this rule is to see that innocent persons are not unnecessarily made victim. The rule cannot be allowed to be a shield for corrupt. Moreover, the corroboration need not be by direct oral evidence and can be gathered from circumstantial evidence. The sole evidence of a complainant is sufficient to convict a person, if it is reliable, acceptable and trust worthy. There was a stage under our criminal justice system when the victim of rape was also considered as an accomplice. However, the law rectified itself over the time and gradually it was realized that it was unjust to consider and brand, a victim as an accomplice and seek corroboration of her testimony. Ultimately, Supreme Court laid down that sole testimony of a victim of rape, if trustworthy, was sufficient to convict the accused. In case of bribe giving and taking, normally people do not report the instances of bribe because it suits them to give bribe as they get their illegal works done. Only few persons come forward who either do not believe in giving bribe or who are on the right track or who are fed up by giving bribe. It requires great courage to report a matter to the Anti Corruption Branch in order to get a bribe taker caught red handed. In our judicial system complainant sometime faces more harassment than accused by repeatedly calling to police stations and then to court and when he stands in the witness box all kinds of allegations are

made against him and the most unfortunate is that he is termed as an accomplice or an interested witness not worthy of trust. I fail to understand why a witness should not be interested in seeing that the criminal should be punished and the crime of corruption must be curbed. If the witness is interested in seeing that there should be corruption free society, why Court should disbelieve and discourage him. The witness who reported the demand of bribe so as to trap the culprits cannot be considered as an accomplice or non-trust worthy or interested witness. There is no reason for the court insisting upon an independent corroboration of the complainant's evidence in regard to the demanding of bribe before the trap was laid. When a given complainant first visits a public servant for doing or not doing some task for him, he does not go to him as a trap witness. He goes there in a natural way for a given task. To require him to take a witness with him at that stage would amount to attributing to the complainant a thought and foreknowledge of the fact that the accused would demand bribe. (Rajinder Kumar Sood v. State of Punjab 1982 Cri.LJ 1338. The necessity for court to search for independent witness in case of charges for corruption cannot be insisted upon. Such crimes are committed in secrecy and normally bribe is not taken openly (although there are bold public servants who do even that). In case of trap where accused has not been lured and goaded in some form to accept bribe but the accused himself has created a situation so that he gets bribe money or the accused indulges in the harassment of the complainant to compel the complainant to give bribe and the complainant reports the matter, the absence of independent witnesses to support the version of the complainant cannot be a ground to acquit the accused.

18. I fully agree with the view taken in the aforesaid case. Moreover in the present case, the statement of PW2 has been corroborated by other witnesses of the raiding party, namely, PW3 and PW5. Therefore, there is no reason to reject the testimony of PW2 when there is no evidence to prove that he was inimical or he had any motive to involve the complainant in a false case.

19. Now coming to the issue of investigation admittedly done by a Inspector and not a DCP or ACP and there being no authorization in favor of the Inspector having been brought on record merits consideration in view of the language of Section 17 of the Act which mandates investigation either by a ACP or by a person

authorized in this behalf. The appellant has also contended that the manner investigation has been done in this case has also caused serious prejudice to the case of the appellant inasmuch as, no investigation has been done by the I.O. to find out whether the complainant was ever a lessee at the premise and had applied for the electricity connection at all. It is also submitted that neither the hand wash nor the pant wash of the appellant was taken into possession for the reasons which were never disclosed. To support the aforesaid contentions, the appellant has relied upon the judgment delivered in the case of. Pushpal Chand Bhaskar v. State : 99(2002)DLT620 ; State of Haryana v. Bhajan Lal AIR 1992 Supp (1) SCC 335 and State, Inspector of Police v. Surya Sankaram Karri (2006) 3 SCC (Cri) 225 while the Additional public prosecutor has relied upon State of Rajasthan v. Shambhoogiri AIR 2005 SC 1643, Rajender Dass Gupta v. CBI 2001 (2) CC Cas131 and State by CBI v. Shri Bangarappa 2001 (1) CC Cas(SC) 1.

20. I have perused all the aforesaid judgments. The Judgment in the case of Pushpal Chander Bhasker v. State : 99(2002)DLT620 is not a final judgment as the issue was left for consideration of the lower court. Moreover in that case a reference was also made to an earlier judgment delivered by the Hon'ble Supreme Court in H.N. Rishbud and Anr. v. State of Delhi reported in : 1955 CriLJ526 where it has been observed;

A defect or illegality in investigation, however, serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. A police report which result from an investigation is also the material on which cognizance can be taken. It cannot be maintained that a valid and legal police report shall be the foundation of the jurisdiction of the Court to take cognizance. Section 190, Cr.P.C. is one out of a group of sections under the heading 'Conditions requisite for initiation of proceedings'. The language of this section is the marked contrast with that of the other sections of the group under the same heading, i.e. Sections 193 and 195 to 199.

21. In the case of Surya Sankaram Karri (supra) in para 13 of the judgment Hon'ble Supreme Court made the following observations:

13. Provisions of the 1988 Act, no doubt, like the 1947 Act seek to protect public servant from a vexatious prosecution. Section 17 provides for investigation by a person authorized in this behalf. The said provision contains a non-obstante clause. It makes investigation by police officers of the ranks specified therein to be imperative in character. The second proviso appended to Section 17 of the Act provides that an offence referred to in Clause (e) of the Sub-section (1) of Section 13, shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police. Authorization by a Superintendent of Police in favor of an officer so as to enable him to carry out investigation in terms of Section 13 of the Act is a statutory one. The power to grant such sanction has been conferred upon the authorities not below the rank of superintendent of police. The proviso uses a negative expression. It also uses the expression 'shall'. Ex-facie it is mandatory in character. When the authority of a person to carry out investigation is questioned on the ground that he did not fulfill the statutory requirements laid down therefore in terms of the second proviso, the burden, undoubtedly, was on the prosecution to prove the same. It has not been disputed before us that the investigating officer, PW41, did not produce any record to show that he had been so authorized. Shri. K Biswal, the investigating officer, while examining himself as PW41, admitted that he had not filed any authorization letter. He stated that :

I have received the specific authorization from an S.P., CBI, to register a case, but I have not filed the said authorization letter.' However, in the same case, in para 21, it has also been stated:

21. ...It is true that only on the basis of illegal investigation a proceeding may not be quashed unless miscarriage of justice has been shown, but, in this case, as we have noticed hereinbefore, the respondent had suffered miscarriage of justice as the investigation carried out by PW41 was not fair.

22. This was also taken in Rishbud case (supra) holding that once a police report of the crime after completion of investigation has been filed, such investigation may be irregular and even by a person not authorized, the defect in investigation would not vitiate the proceedings. The aforesaid view has been again reiterated by a later judgment of the Apex Court in the case of Karnataka Lokayukta and Ors. v.

B. Srinivas, decided on 18th August in Crl. Appeal No. 1289/2008 where the case of Bhajan Lal (supra) was also considered. In that case it was held ' that the defect in authorization howsoever serious has no direct bearing on the procedure relating to the cognizance of trial. If cognizance is in fact taken on a Police report by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of trial which follows it cannot be set aside unless the illegality in this investigation can be shown to have brought about a miscarriage of justice'. The Learned Judges after discussing the authorization granted by the Superintendent of Police to the Inspector and discussing the law earlier also laid down the following observations: 12. In Ram Singh's case (supra) this Court indicated the position lucidly after referring to Bhajan Lal's case (supra) in para 14. The same reads as follows:

14. It may be noticed at this stage that a three-Judge Bench of this Court in H.N. Rishbud v. State of Delhi had held that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. Referring to the provisions of Sections 190, 193, 195 - 199 and 537 of the Code of Criminal

Procedure (1898) in the context of an offence under the [Prevention of Corruption Act, 1947](#), the Court held: A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation as provided in Section 190 Cr.P.C is the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance. Section 190 Cr.P.C is one out of a group of sections under the heading 'Conditions requisite for initiation of proceedings'. The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e., Sections 193 and 195 - 199. These latter sections regulate the competence of the court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, Clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report

may still fall either under Clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 337 Cr PC which is in the following terms is attracted: Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice. If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial is well settled as appears from the cases in - 'Parbhu v. Emperor' and - 'Lumbhardar Zutshi v. R. AIR 1950 PC 26. It was further held: In our opinion, therefore, when such a breach is brought to the notice of the court at an early stage of the trial, the court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5A of the Act. It is in the light of the above considerations that the validity or otherwise of the objection as to the violation of Section 5(4) of the Act has to be decided and the course to be adopted in these proceedings, determined. In Bhajan Lal case 1992 Supp (1) SCC 335 this Court had found on facts that the SP had passed the order mechanically and in a very casual manner regardless of the settled principles of law. The provisions of Section 17 of the Act had not been complied with. As earlier noticed the SP while authorising the SHO to investigate had made only an endorsement to the effect, "Please register the case and investigate". The SP was shown to be not aware either of the allegations or the nature of the offences and the pressure of the workload requiring investigation by an Inspector. There is no denial of the fact that in cases against the respondents in these appeals, even in the absence of the

authority of the SP the investigating officer was in law authorized to investigate the offence falling under Section 13 of the Act with the exception of one as is described under Sub-section (1)(e) of the Act. After registration of the FIR the Superintendent of Police in the instant appeals is shown to be aware and conscious of the allegations made against the respondents, the FIR registered against them and pending investigations. The order passed by the SP in the case of Ram Singh on 12-12-1994 with respect to a crime registered in 1992 was to the effect: In exercise of powers conferred by the provisions on me, under Section 17 of the [Prevention of Corruption Act, 1988](#), I, P.K. Runwal, Superintendent of Police, Special Police Establishment, Division I, Lokayukta Karyalaya, Gwalior Division, Gwalior (M.P.), authorised Shri D.S. Rana, Inspector (SPE), Lak-Gwl (M.P.) to investigate Crime No. 103 of 1992 under Sections 13(1)(e), 23(2) of the [Prevention of Corruption Act, 1988](#) against Shri Ram Singh, DO, Excise, Batul (M.P.).

13. If one looks at the order passed, which formed the subject matter of challenge in Ram Singh's case (supra) it is crystal clear that the order passed in the present case by the Superintendent of Police is more elaborate and as rightly submitted by learned Counsel for the appellant, the reasons are clearly discernible. Even otherwise, the effect of Section 19(3) of the Act relating to prejudice has been completely lost sight of by the High Court. The second reason indicated by the High Court to quash the proceedings also has no substance.

14. The inevitable conclusion is that the order passed by the High Court is indefensible and is set aside. However, it would be in the interest of justice if the trial is completed on the basis of the charge sheet filed as early as practicable preferably by the end of February, 2009.

23. In view of the aforesaid authoritative pronouncement in 2008 itself where the legal position has been crystallized it cannot be said that conducting of the investigation in this case by a Inspector without any authorization which also resulted into the filing of a report under Section 173 of the Code of Criminal Procedure after completing the investigation and on that basis the cognizance was also taken, would make the conviction of the appellant illegal on the ground of

defect of authorization unless it is shown that any serious prejudice has been caused to the incumbent on account of such investigation which was conducted by an Inspector instead of DCP/ACP.

24. In the present case, the learned Counsel appearing for the appellant submitted that serious prejudice has been caused to the appellant inasmuch as the investigating officers have not carried out any investigation about the complainant having taken a DSIDC shed on lease; applying for electricity meter in the said shed and further as to whether hand wash/pant wash of the appellant was taken into possession. In this regard, as far as the first two aspects are concerned, PW-6 was examined by the prosecution. But unfortunately, he has not supported the case of the prosecution. However, it cannot be said that the investigation has not been conducted by the IO in this regard. Even though the IO has not taken the hand wash or the pant wash of the accused in possession, the same does not result in any miscarriage of justice because the money has been recovered from the appellant kept in a polythene bag taken out from his pocket which contained the GC notes handed over to the complainant for giving it to the appellant. Even otherwise, there is no reason for collecting the hand wash or pant wash of the accused as neither the hand wash nor the pant wash came into contact with the GC notes which might have been converted into pink when dipped in the phenolphthalein powder. Therefore, it cannot be said that the investigating officers have conducted the investigation in a manner which might have caused any prejudice to the case of the appellant. Thus, even point of investigation being carried out by the Inspector in this case being illegal also cannot be sustained.

25. Taking into consideration the aforesaid observations made by Hon'ble Supreme Court in the case of Karnataka Lok Ayukta (supra) and the judgments cited by the appellant as referred to above including the case of Sankaram Karri (supra), it is apparent that despite the language of Section 17 of the Act as quoted above, if the investigation is done by an officer below the rank of Additional Commissioner of Police and the same is completed and the challan is filed before a competent court who has taken cognizance thereof and the proceedings ensued resulting in the conviction of the accused, the same would not be set aside merely because the investigation has not been conducted by an officer authorized to do

so under Section 17 of the Act unless and until it is shown that such investigation is resulted in miscarriage of justice as has been observed in the case of Sankaram Karri in paragraph 21 thereof (supra).

26. I have also perused other Judgments filed on record by the parties, which are of no help to the case of the appellant in view of the facts of this case and the legal position as discussed above and therefore, I do not find any reason to interfere with the impugned Judgment so far as the conviction of the appellant is concerned.

27. In view of the aforesaid, I do not find any reason to interfere with the orders passed by the learned Additional Sessions Judge in convicting the appellant for the offences charged against him and thus the impugned judgment dated 27th March, 2002 is sustained.

28. Insofar as the order of sentence is concerned, taking into consideration the large scale increase in corruption in public life from top to bottom and the punishment awarded to the appellant in this case, there is no reason for interfering with same. Accordingly, even on that score, no relief can be granted to the appellant.

29. Consequently, the appeal is dismissed with the directions to the appellant to surrender before the concerned Additional Sessions Judge within a period of 15 days from today, failing which his bail bonds will stand forfeited and an appropriate action shall be taken by the learned Additional Sessions Judge for securing the attendance of the appellant including issuance of notice to his surety and taking such other action as is permissible in law to ensure that the appellant undergoes the sentence awarded to him. Trial court record along with a copy of this order be sent back forthwith.