

Yogesh Kumar Vs. State

Yogesh Kumar Vs. State

SooperKanoon Citation : sooperkanoon.com/691086

Court : Delhi

Decided On : Apr-02-2009

Reported in : 158(2009)DLT16

Judge : Mool Chand Garg, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 4(1), 5, 5(1)(2), 5(4), 5A, 7, 12, 13, 13(1), 13(2), 17, 19(3), 20 and 23(2); Evidence Act - Sections 32, 33 and 101; Factories Act; [Prevention of Corruption Act, 1947](#); Code of Criminal Procedure (CrPC) - Sections 173, 313, 342 and 391; Indian Penal Code (IPC) - Sections 107 and 120B; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 8(1) and 13(1); Indian Penal Code (IPC) - Sections 161 and 165; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 190, 190(1), 193, 195 to 199 and 537

Appeal No. : Crl. App. 15/2007

Appellant : Yogesh Kumar

Respondent : State

Advocate for Def. : Navin Sharma, APP in Crl. App. 4 and 15/2007

Advocate for Pet/Ap. : Ramesh Gupta, Adv. in Crl. App. 4 and 15/2007 and; K.K. Sud, Sr. Adv. in Crl. App. 4/200

Disposition : Appeal dismissed

Judgement :

Mool Chand Garg, J.

1. This order shall dispose of the aforesaid two appeals which arise out of the common judgment dated 13.12.2006 delivered by the Special Judge in CC No. 48/01, whereby the Special Judge has convicted the appellant, Yogesh Kumar, under Section 12 of the [Prevention of Corruption Act, 1988](#) (hereinafter referred to as 'the Act') and appellant, Neeraj Dutta under Section 7 & 13(2) of the Act. Thereafter, vide order dated 14.12.2006, the Special Judge sentenced Yogesh Kumar to undergo RI for two years and to pay a fine of Rs. 10,000/- and in default of payment of fine to undergo SI for three months, while Neeraj Dutta, has been sentenced to undergo RI for three years and a fine of Rs. 15,000/- and in default of payment of fine to undergo SI for six months, under Section 13(2) of Act, she has been further sentenced to undergo R.I. for 2 years & fine of Rs. 5000/- & in default S.I. for 4 weeks.

2. The genesis of the prosecution's case lies in the complaint Ex. PW5/A recorded by Inspector O.D. Yadav (PW6) on 17.4.2000 which has been made by Shri Ravijit Singh before the Anti Corruption Branch (ACB) which was signed not only by the complainant but also by the shadow witness PW-5, Shri S.K.Awasthi, who has proved the complaint before the trial court. It reads as under:

I am doing business of sale purchase of cars at Shop No. A-71, Vikas Puri, New Delhi for the last 8 years by the name and style of M/s Sethi Motors and in that shop there was no electricity meter installed and on 6.5.1995 I applied for the meter and electric meter bearing K. No. 133158 was installed and after few months, I noticed that electricity meter was not there and that Ms. Neeraj Dutta had got the electric meters of several persons installed in that market and I also met her and today on 17.4.2000 at about 7.30 am. I received a telephone call from Ms. Neeraj Dutta, who is Inspector of DVB in Janak Puri area, and she told me to meet her at her home if I wanted to get installed an electricity meter. I reached at her home at about 8.00 am in the morning and Ms. Neeraj Dutta demanded Rs. 15,000/- cash for installation of electric meter and finally she agreed to accept Rs.

10,000/- and Ms. Dutta told me to get ready the electricity bill papers and Rs. 10,000/- as bribe and she will come between 3.00 to 4.00 pm at my shop to collect the same and thereafter within three days my electric meter would be installed. I agreed to pay the bribe on account of duress. I am against taking and giving bribe, I have no grudge against Ms. Neeraj Dutta nor have any dealings with her. Legal action be taken. I have brought the bribe amount of Rs. 10,000/- with me.

Sd/- Sd/- Sd/-

Complainant S.K. Awasthi

3. On the basis of the aforesaid complaint, PW6 the raid officer recorded pre-raid proceedings Ex. PW5/B which also bear the signatures of PW-5 Shri S.K. Awasthi. At that time, the money brought by the complainant to the tune of Rs. 10,000/- in the form of 20 GC notes of Rs. 500/- each, was also taken into possession vide Ex. PW5/C after treating the same with phenolphthalein powder & was given back to the complainant, after explaining him the procedure to be followed. A raiding party was constituted of which PW-5, 6 and 7 are the important members. PW-5 accompanied the complainant, who offered Neeraj Dutta the amount of Rs. 10,000/- as demanded which amount was then given transferred by Neeraj Dutta to Yogesh Kumar at the same time. On the signal given by the shadow witness the raiding party then came inside the shop where the incident happened and recovered the aforesaid sum from Yogesh Kumar & put the hands of both Yogesh Kumar and Neeraj Dutta in the sodium carbonate solution brought by the raiding party, which turned pink. Thereafter, FIR No. 21/2000 was registered against both the appellants. After completing the investigation, the prosecution filed the challan & obtained sanction from PW-1, the sanctioning authority vide Ex. PW1/A. The Special Judge framed charges under Section 7 and 13(2) of the Act against Neeraj Dutta and under Section 12 of the Act against Yogesh Kumar. No charge of conspiracy was found.

4. In order to prove its case the prosecution examined seven witnesses. PW-1 N.P. Singh is the sanctioning authority who proved the sanction Ex. PW1/A. PW-2 T.N. Sethi is a formal witness who produced the service record Ex. PW2/B seized vide seizure memo Ex. PW2/C. PW3 to 5 are formal witnesses regarding the

deposit of hand-wash & other exhibits, which was later on transferred to Malkhana. PW-5 Shri S.K. Awasthi is the most important witness as he acted as a punch witness and remained a shadow witness throughout the proceedings right from the time the complaint was made as Ex. PW5/A and was recorded. The demand was made and the money was accepted by Neeraj Dutta, transferred to Yogesh Kumar and was seized and further collection of hand-wash from Yogesh Kumar & Neeraj Dutta. The next witness is Inspector O.D.Yadav, PW-6, who acted as a raid officer which PW-7 ACP Niranjan Singh investigated the matter. At the relevant time he was only an Inspector.

5. Neeraj Dutta in her statement under Section 313 Cr.P.C. has stated that she neither demanded nor accepted any money from the complainant in the form of bribe and stated that she was falsely implicated in this case. However, she also said:

On 17.04.2000 I was posted and working as LDC in DVB in the office at Janak Puri District. On the said date, I was busy in my official duty in a collection camp organized by my department to collect dues from the consumers. In the afternoon of the day in question, I received a telephonic message on my mobile phone from the complainant Ravjit Singh Sethi, deceased wherein he asked me to come his shop as he needed my help in getting the electricity charges deposited. He was living and doing his business in the vicinity where I am residing along with my family. I knew him since I have transacted sale of Maruti Esteem car and purchase of Maruti 800 through him. I reached at the shop of the complaint on 17.04.2000. The complainant met me there. He handed over electricity bill along with a bundle of GC notes requesting me to deposit the said amount in the DVB office. I told him that he could give the bill and money next day for depositing in DVB but he again and again requested me. At the time co-accused Yogesh Kumar was also there and I handed over to him the bill and the money for depositing the same in DVB.

6. Neeraj Dutta also examined defence Witnesses. DW-1 who has proved a copy of the demand note Ex.DW1/A which shows that a demand note was issued to the complainant in the sum of Rs. 10,515/- for sanctioning additional load in connection with electricity meter No. K 813-133-1580 813-133-1580 . A Police

constable, who appeared as DW2 placed on record copy of the order dated 30.01.2003 declaring Ravijit Singh a bad character. Dharamvir Singh DW3 a constable placed copy of the FIR No. 636/92 as EX.DW3/A while DW4 Had Constable Satyawan placed on record list of 7 cases registered against Ranjit Alias Happy son of Avtar Singh vide Ex. PW5/A. He also placed copy of the FIR No. 471/01 which are exhibits DW5/A and DW5/B.

7. Before the Trial Court it was contended that as she was neighbour of the complainant, and had also sold her car through him, on the day of the raid she with her driver (co-accused Yogesh Kumar) after collecting the dues from the consumer in the camp organized by DVB, went to the shop of the complainant, only because, the complainant wanted her to deposit the electricity bill amount of the complainant. In this regard complainant handed over his electricity bill along with money to deposit the same in DVB which was received by her along with a bill and she handed over the same to co-accused Yogesh Kumar for depositing the same with DVB. Accordingly it was submitted that the defence of accused disclosed in her statement under Section 313 Cr.P.C. was probable whereas evidence of the prosecution was not beyond reasonable doubt. It was further submitted that there were discrepancies about her designation in the complaint Ex. PW5/A, where she has been referred to as Inspector of DVB whereas she was only an Assistant. It was also stated that since the electricity bill was not taken into possession at the time of the raid and was taken into possession subsequently by PW7 it shows that the case of the prosecution was highly improbable.

8. Appellant Yogesh Kumar has denied having received any bribe money from the complainant and stated that he was only a driver and his services were engaged on day-to-day basis by Neeraj Dutta. He also stated that even on 17.04.2000 he was engaged for a sum of Rs. 100/- & that in his presence no conversation took place between the complainant and Neeraj Dutta. According to him, when he entered the shop with Neeraj Dutta the complainant handed over Rs. 10,000/- along with the bill for depositing the same with DVB later to Neeraj Dutta which was later given to him by Neeraj Dutta. It was also submitted that he has simply gone to the spot at the call of the co-accused and he was neither a public servant nor there is any charge of conspiracy and therefore there was no question of

convicting him under Section 12 of the Act.

9. However, the Special Judge has believed the case of the prosecution in the light of the complaint Ex. PW5/A and deposition of the witnesses examined by the prosecution and recovery of Rs. 10,000/- from Shri Yogesh Kumar to whom admittedly the said amount was handed over by Neeraj Dutta soon after it was received by her from the complainant. It comprised of same GC Notes which were given to complainant after treatment and the same was taken into possession vide Seizure memo Ex. PW5/C, while the other documents including the electricity bill was later on taken into possession and was marked as PW7/1. Later exhibited as PW7/A. It was held:

20. It becomes crystal clear from the oral as well as documentary evidence on record that the electricity bill Ex. PW7/1 was not given by the complainant along with the recovered money to accused Neeraj Dutta. Mere assertion of accused Neeraj Dutta of receiving electricity bill (Ex. PW7/1) along with recovered money and similar assertion of co-accused Yogesh Kumar of receiving the electricity bill Ex. PW7/1 along with recovered money from his co-accused cannot be accepted on the face of it as nothing has been brought out by the defence in the cross-examination of material witnesses to substantiate the above assertion of both the accused. This exposes the hollowness of the defence version.

10. The special Judge thus disbelieved the defence of the appellant NeeraJ Dutta and observed, that if the money was to be paid for payment of bills, there is no reason as to why the payment of full amount which was required to be paid i.e Rs. 10,157 was not paid and only Rs. 10,000/- were paid. He also stated that there was clinching evidence of panch witness PW5 and raid officer PW6 and, thus, convicted her.

11. The Special Judge also held appellant Yogesh Kumar guilty under Section 12 of the Act, by making following observations:

22. As regards accused Yogesh Kumar is concerned, I find that he was hand in glove with his co-accused in committing the offence in question by abetting it, otherwise there was no occasion for his accompanying co-accused up to the spot

and being present near his co-accused up to the spot and being present near his co-accused as he claims himself to be a mere daily wager driver who was on duty with co-accused on that day only. Had accused Yogesh Kumar been a mere daily wager driver then he would have in normal course remained in the car and would not have come to the spot. It is not the case of this accused Yogesh Kumar that he was called to the shop of the complainant by his co-accused or anyone else to count the money. The plea of accused Yogesh Kumar of being mere daily wager driver cannot be accepted on its face because there is a unchallenged evidence of the Investigating Officer (PW7) to the effect that accused Yogesh had disclosed during interrogation that he was a small time contractor and he gets the work of people done by going to the DVB office. This appears to be more probably as the stand of his co-accused is that she had handed over the recovered GC notes for depositing the same with DVB.

12. The Special Judge convicted the appellants and sentenced both of them as aforesaid. The aforesaid Judgment of conviction and order of sentence has been assailed by the appellants before this Court on various grounds as mentioned in the Memorandum of Appeals filed separately.

13. In support of the appeal of Yogesh Kumar, Shri Ramesh Gupta his counsel has made the following submissions:

I. That in the complaint Ex. 5/A neither any allegation has been made against Yogesh Kumar nor his name appears therein. Therefore, even if the convicting court took the complaint as proved in evidence yet as far as the appellant is concerned he is not involved in demanding the bribe nor he was present at the time of demand of bribe.

II. That before convicting a person under the Act it should be proved that he was involved in demand and acceptance of bribe or he should be involved in abetting the demand or acceptance of bribe.

III. The material witness, according to prosecution was shadow witness, who accompanied the complainant at the time of giving of bribe who appeared as PW-5 S.K. Awasthy. In his examination in chief at internal page 2 last line he has

mentioned 'at about 5.20 PM one lady along with one person came to the shop of the complainant. Their names were revealed as Mrs. Neeraj Dutta and Yogesh. Mrs. Neeraj Dutta asked the complainant that she was in a hurry and they should go to the car to discuss/ talk but complainant replied that he will talk in the shop. Mrs. Neeraj Dutta asked the complainant to give papers regarding his electricity meter and Rs. 10,000/- to her as she was in a hurry. Complainant handed over the documents of his electricity meter and treated GC notes of Rs. 10,000/- to Mrs. Neeraj Dutta in her right hand after taking the same out of left pocket of his shirt. Mrs. Neeraj Dutta handed over said GC notes to his associate Yogesh Kumar to count and she told the complainant that his work would be done.' In his cross on page 6 he answers the first question that accused Neeraj Dutta was addressing complainant Sethi as 'Bhai Sahib I am in a hurry and complainant should deliver the papers and money to her. Even if the statement of this witness is treated to be true on all count no where he alleges that Neeraj Dutta asked the complainant to give bribe money or complainant stated that he had given bribe money then how Yogesh Kumar, Appellant, would know that Rs. 10,000/- was bribe money which was accepted by Mrs. Neeraj Dutta. Therefore, the entire case taken is true against Yogesh Kumar lacks basic ingredients of offence that money which was received by Neeraj Dutta and handed over to Yogesh Kumar was demanded and received as bribe money.

IV. That there is no allegation that Yogesh Kumar intentionally aided and abetted the crime of demand and acceptance of money. The offence was completed when Neeraj Dutta accepted the money which was handed over to her and till that time appellant had no role to play whatsoever.

14. He also cited a judgment delivered in the case of Dilip Kumar v. State and Anr. 2006 (3) JCC 1590 where the proceedings were quashed after the complainant died and before recording of his evidence which comes also under the Prevention of Corruption Act.

15. It has also been submitted that the Special Judge has committed error in holding Yogesh Kumar guilty as an abettor by invoking the provisions of Section 12 of the said Act. In this regard he also made a reference to provisions of Section

107 IPC where the abetment has been defined. The said provision reads as under:

107. Abetment of a thing:- A person abets the doing of a thing, who-

First:- Instigates any person to do that thing; or

Secondly:- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly:- Intentionally aids, by any act or illegal omission, the doing of that thing.

16. It is submitted that in view of the provisions contained under Section 107 IPC none of the ingredients which proves abetment have been proved on record by the prosecution. He also submitted that in the present case it was neither the case no evidence has come on record to show that Yogesh Kumar had any role in either demanding the bribe or accepting the bribe from the complainant. Merely because the money was passed over to him by Neeraj Dutta cannot prove that either he was a co-conspirator or was an abettor more so when no charge under Section 120B IPC has been proved against him. In this regard, he also relied upon judgment delivered in the case of Shri Ram v. the State of UP reported as 1975 Cri. L.J. 240 where it has been held:

In order to constitute abetment, the abettor must be shown to have 'intentionally' aided to commission of the crime, Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirement of Section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107.

17. Reliance has also been placed upon the judgment delivered by the Hon'ble Supreme Court in the State of Madhya Pradesh v. Mukesh and Ors. (2007) 2 SCC

680 where it has been held that:

A person, it is true, abets by aiding, when by any act done either prior to, or at the time of, the commission of an act, he intends to facilitate and does in fact facilitate, the commission thereof would attract the third clause of Section 107 of the Penal Code. Doing something for the offender is not abetment.

18. Similarly, while referring to the judgment delivered in the case of Trilok Chand Jain v. State of Assam AIR 1959 SCC 673 it has been submitted that:

to aid the commission of the crime is the gist of the offence of abetment by aid. Such intention on the part of the appellant was lacking in this case.

19. Having scrutinized the evidence available on record, I do not find that any role was assigned to Yogesh Kumar when the complaint Ex. PW5/A was made by deceased Ravijit Singh. Even in the evidence of the raiding officer including the IO nothing has come to show that the appellant Yogesh Kumar was a co-conspirator of Neeraj Dutta or was hand in glove with her in having demanded the bribe or in having accepted the bribe. Thus, I find that in so far as this appellant is concerned there being no evidence either to prove conspiracy or to prove abetment, his conviction under Section 12 of the Act cannot be sustained. Accordingly, this appellant is entitled to acquittal.

20. Now coming to the case of Neeraj Dutta, learned senior counsel appearing for her had assailed the judgment of conviction & order of sentence inter alia on the following grounds:

(i) Neither Inspector O.D.Yadav nor ACP Niranjan Singh (at that time Inspector) was authorized to investigate this matter in view of the bar contained under Section 17 of the Act, which reads as under:

17 - Persons authorised to investigate: Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,-

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under Sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in Clause (e) of 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.

Admittedly neither of them was either in the rank of ACP nor were authorized to investigate the matter by the State Government specifically.

(ii) The investigation of the case was not done properly inasmuch as there is no explanation as to what happened to the electricity bill which according to the complainant was to be handed over to Neeraj Dutta at the time of payment of the bribe. Admittedly, neither such bill has been recovered from Neeraj Dutta nor any such bill was treated with phenolphthalein powder. It is submitted that this casts a serious doubt in the story of the prosecution.

(iii) The prosecution also failed to produce on record any record of investigation conducted by them or evidence collected to prove that any application made by the complainant for sanction and installation of the meter was pending at the relevant time whereas according to the documents produced in defence, it is apparent that a bill of Rs. 10,515 was issued to the complainant for additional load

which was payable on 12.04.2000, i.e., before the alleged demand or the raid conducted by the prosecution initiated on the basis of the complaint dated 17.04.2000.

(iv) Neither any lady witness was associated with the raiding party despite the fact that the trap was of a lady officer nor two punch witnesses were associated with the raid while it is normally done.

(v) There is also no explanation as to what was the necessity of taking into possession the electricity bill on 11.1.2001 while the raid was conducted on 17.4.2000.

(vi) It is also stated that the testimony of DW-1 goes to show that an electricity meter stood already installed in the premises, belonging to the complainant where even additional load was sanctioned as per the demand note dated 12.4.2000 produced in defence by Neeraj Dutta and thus there could not have been any motive for the complainant to offer the bribe.

(vii) The sanction order Ex. PW1/A, the salary statement and the service book of Neeraj Dutta establish that she was only a LDC and was not an Inspector and thus there was no occasion for her to help the complainant. It is borne out by the record that accused Dutta was posted in Janak Puri District and was residing at DG-III/405, Vikas Puri and had a shop A-71/A, Vikas Puri and were already known to each other and had dealings. There is no investigation as to how she could have helped the complainant in this case.

(viii) There are also contradictions about the timing of the raid. As per the complaint the time was fixed between 3 to 4 pm where as the raid was conducted at about 5:20 pm, yet none from public in the market or adjoining shops was joined was joined as a witness at the time of recovery.

(ix) The very fact that the Electricity bill has been introduced on 11.01.2000 which as per the complaint ought to have been with Neeraj Dutta at the time of the raid itself proves that there is fabrication on the part of the prosecution..

(x) The complainant, Ravijit Singh Sethi having not appeared in the witness box, no credence can be given to the complaint Ex. PW5/A and the same cannot be read as a substantial piece of evidence.

(xi) The prosecution is required to prove its allegations beyond reasonable doubt while the accused can prove its defence by preponderance of probability.

(xii) Where the allegations of demand of bribe are false, the allegation must be viewed with suspicion and presumptions would not arise.

21. Learned senior counsel appearing for the appellant has also placed reliance on the following judgments:

(a) M. Abbas v. State Kerala : (2001)10SCC103 .

(b) V. Venkata Subharao v. State : 2007 CriLJ754

(c) Trilok Chand Jain v. Anil Kumar Verma 1977 Cri. L.J. 254 SC

(d) Ramlinga v. State Cri. L.J. 732 (MAD.)

(e) T.Subramanian v. State of Tamil Nadu 2006 (1) SCC 41

(f) Ganga Kr. Srivastava v. State of Bihar : 2005 CriLJ3454

(g) Rabindra Kr. Dey v. State of Orissa : 1977 CriLJ173

(h) G.V.Nanjundiah v. State (Delhi Admin.) : 1988 CriLJ152

(i) Trilok Chand Jain v. Delhi 1997 Cri. L.J. 254

(j) Ram Swaroop Rathore v. State of M.P.

(k) State of M.P. v. Anil Kumar 0065/2007

(l) Subhash Parbat Sonvane v. State of M.P. : 2002 CriLJ2787

(m) Hakumat Rai Nigam v. State : 22(1982)DLT370

(n) UOI v. Purananda Biswas : (2005)12SCC576

(o) Subhash Chand Chauhan v. CBI : 117(2005)DLT187

(p) M. Narsinga Rao v. State of A.P. : 2001 CriLJ515

(q) Punjrao v. State of Maharashtra : AIR 2002 SC486

22. On the other hand, learned APP appearing for the State has submitted that the arguments addressed on behalf of the appellants, have no legs to stand inasmuch as:

(i) The complaint Ex. PW5/A has been proved by PW5 and by PW-6. A reading of the complaint goes to show that the complainant wanted to get a new meter installed in view of his old meter having been stolen which fact has not been rebutted by the defence inasmuch as the evidence produced in defence vide Ex. PWD1/A was not even put to the witnesses who appeared for the prosecution at the time of their cross-examination. In fact the document, namely, Ex.DW1/A heavily relied upon by the defence appears to be a handy work of the appellant. It is submitted that in case any bill was given to the appellant for deposit why it was not produced either at the time of raid or immediately thereafter or even in the cross examination of the witnesses of the prosecution. It is thus submitted that the conclusion drawn by the special Judge in this regard was correct and does not call for any interference.

(ii) No doubt, the Inspectors who conducted investigation were not authorized to investigate the matter in view of Section 17 of the Act, but nothing has been brought to the notice of this Court that on account of such irregularity any prejudice has been caused to the case of the defence more so when the challan was filed after completing the investigation and cognizance was taken thereof by the Special Judge.

iii) Moreover, the receipt of the sum of Rs. 10,000/- by Neeraj Dutta and passing of the same to Yogesh Kumar is not even disputed stands proved in view of the defence taken by the appellant in her statement under Section 313 Cr.P.C. The money recovered comprises of the same amount which was brought by the

complainant before ACB and which was returned to the complainant after treatment.

iv) The demand of bribe vide Ex. PW5/A and acceptance thereof is proved by the statement of PW-5, while the defence of the appellant about having received the sum of Rs. 10,000/- for payment of bill which was for a sum of Rs. 10,515/- is itself falsified as no one would accept a lesser amount if it simply to be deposited as a help of the person who has to deposit the bill.

v) Insofar as the character of the complainant is concerned, it is of absolutely no consequence and even if it is presumed for the sake of argument that the complainant was facing prosecution in a number of case it would not take away his complaint because there is nothing on record to substantiate that there was any infirmity between the complainant and the appellant. Mere suggestions do not prove the fact.

(vi) Nothing has been brought on record as to why a neighbor would falsely implicate the appellant.

23. Regarding the judgments relied upon by the defence, it is stated that they have no application to the facts of this case as the motive, the demand and the acceptance of the bribe stands established by cogent evidence led on behalf of the prosecution in view of the statements made by PW-5, 6, and 7. It is thus submitted that in the present case, there is no reason to set aside the judgment.

24. At this stage, to appreciate the defence of the appellant Neeraj Dutta, I may refer to her answers under Section 313 Cr.P.C. The answers given by the appellant to question Nos. 4, 10 and 26 which reflect inherent contradictions in her stand are reproduced hereunder:

Q.4. 'It is further in evidence against you that on 17.4.2000 at about 7.30 am you made a telephonic call to the complainant and told him that if he wanted to get a electric meter installed he should talk to you at your home and thereafter complainant met you and you told him that he should keep ready electricity papers and Rs. 15,000/- as bribe but thereafter amount was settled and that thereafter

you told the complainant to keep ready the electricity papers etc. and Rs. 10,000/- as bribe and you will collect the same from the above said shop between 3 to 4 pm. What have you to say?'

'It is totally incorrect'.

Q.10. 'It is further in evidence against you that thereafter complainant took out the treated GC Note and handed over to you which you accepted in your right hand and told the complainant that you will get the electric meter installed within 2-3 days and thereafter you transferred the bribe money towards your co-accused, Sh. Yogesh Kumar, for counting and keeping the same with him and in the meanwhile panch witness gave the pre-determined signal to the raiding party. What have you to say?'

A. 'It is incorrect.'

Q.26. 'Have you anything else to say?'

A. 'I am innocent. I have never demanded or accepted any money in the form of bribe. I have been involved falsely in this case. On 17.4.2000 I was posted and working as LDC in DVB in the office at Janak Puri district. On the said date, I was busy in my official duty in a collection camp organized by my department to collect dues from the consumers. In the afternoon of the day in question, I received a telephonic message on my mobile phone from the complainant, Ravijit Singh Sethi, deceased wherein he asked me to come to his shop as he needed my help in getting the electricity charges deposited. He was living and doing his business in the vicinity where I am residing along with my family. I knew him since I have transacted sale of Maruti Esteem Car and purchase of Maruti 800 through him. I had reached the shop of the complainant on 17.4.2000. The complainant met me there. He handed over the electricity bill along with a bundle of GC Note requesting me to deposit the said amount in the DVB office. I told him that he could give the bill and money next day for depositing in DVB but he again and again requested me. At the time co-accused Yogesh Kumar was also there and I handed over to him the bill and the money for depositing the same in DVB. At the time, I could not realize the malafide of the complainant. Complainant was having

grudge against me because he was suspecting a surprise DVB raid at my instance, he got me falsely involved in this case. I never demanded or accepted any bribe from the complainant.

25. Similarly, despite her defence that the money in question was received for payment of electricity bill of the complainant, no bill given to her has been produced by her in her defence. In answer to question No. 26 while giving her explanation as to why the money reached to her she did admit this fact in her reply and has stated that the money was given to Yogesh Kumar whereas in the answer to question No. 10 she has stated that it is incorrect.

26. It would be also relevant to take note of the cross-examination of PW-5 on her behalf. In the cross-examination recorded on 24.2.2006, a suggestion has been given that the complainant had forcibly threw the money into her hands for depositing the same in the office, which suggestion has been denied by PW-5. This suggestion goes to show that the defence which she is putting forward is not consistent as she was not sure of her case. Moreover, her further suggestion that accused Yogesh Kumar told the complainant not to quarrel with accused Neeraj Dutta and that Yogesh Kumar agreed to deposit the said money in the office regarding electricity bill is again contrary to her defence and has been rightly denied by PW-5. This again shows that the appellant was trying to say something or the other just to avoid her liability.

27. It is very interesting to note that in the entire cross-examination of PW-5 no suggestion has been given as to which particular bill she agreed to deposit for which she received Rs. 10,000/- from the complainant. The bill of Rs. 10,515/- produced by DW-1 was not even put by the appellant in the cross-examination of the witnesses at the relevant time nor was it recovered from her or Yogesh Kumar at the time of their search. This also goes to show that the story of giving any electricity bill to her by the complainant to deposit is an afterthought because in the complaint reference is not of the bill but is of electricity papers. The very fact that neither any electricity bill nor any other document was either recovered from her or were taken into possession from the complainant at the time of seizure of the bribe falsifies her stand that the money received by her was received for deposit in the

electricity department on behalf of the complainant and thus proves that the said amount was received by her in terms of the story narrated by the complainant to the ACB on the basis of which Ex. PW5/A was recorded. The recovery of same GC Notes which were handed over by the complainant to the ACB and which were treated with phenolphthalein powder have been recovered from Yogesh Kumar after they were given to the appellant proves the case of the prosecution. It may also be observed here that if the electricity meter was in existence and was functional, than such record could have been produced in defence, but no such effort has been made. The manner in which the defence evidence has been led tells its own story.

28. It is quite possible that the IO tried to seize the electricity bill after a long time but such seizure in fact does not improve the case of the prosecution and at the most may an act of some over enthusiasm on the part of the IO who conducted the investigation subsequently but would not entitle the appellant for acquittal.

29. I have also gone through the judgments relied upon by the learned senior counsel appearing for Neeraj Dutta. The propositions laid in those Judgments can be enumerated as under:

- i. The Prosecution must prove motive for demand and acceptance of bribe.
- ii. The presumption which can be raised under Sections 5 and 20 of the Act is basically to relieve the prosecution of the burden of proving a fact which is essential ingredient of the offence and is a rebuttable presumption. However, if the story set up by the prosecution inherently militates against or is inconsistent with the fact presumed it will be rendered sterile from its very inception, if out of judicial courtesy it cannot be rejected out of hand as still-born.
- iii. Mere recovery of money does not prove demand.
- iv. While the prosecution is required to prove its case beyond reasonable doubt the accused is not required can prove his/her defence relying upon the theory of preponderance of probability.

30. The appellants have heavily relied upon the judgment delivered in the case of *Trilok Chand Jain v. Delhi* (Supra). The said judgment had been delivered under Section 4(1) of the Act which is similar to Section 20 of the present Act. Relevant observations made in the aforesaid judgment are reproduced hereunder:

8. Section 4(1) of the Prevention of Corruption Act reads:

Where in any trial of any offence punishable under Section 161 or Section 165 of the Indian Penal Code (or of an offence referred in Clause (a) or Clause (b) of Section (1) of Section 5 of this Act is punishable under Sub-section thereof). It is proved that an accused person has accepted or obtained or has agreed to accept or attempt to obtain for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person it shall be presumed unless the contrary is proved that he accepted or obtain, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said Section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

From a reading of the above provision it is clear that its operation, in terms, is confined to a trial of an offence punishable under Section 161 or Section 165. Penal Code or under Clause (a) or (b) of Section 5(1) read with Sub-section (2) of that section of the Act. If at such a trial, the prosecution proves that the accused has accepted or obtained gratification other than legal remuneration, the trial court has to presume the existence of the further fact in support of the prosecution case, viz, that the gratification was accepted or obtained by the accused as a motive or reward such as mentioned in Section 161. Penal Code. The presumption however, is not absolute. It is rebuttable the accused can prove the contrary. The quantum and the nature of proof required to displace this presumption may vary according to the circumstances of each case. Such proof may partake the shape of defence evidence led by the accused, or it may consist of circumstances appearing in the prosecution evidence itself, as a result of cross-examination or otherwise. But the degree and the character of the burden of proof which Section 4(1) casts on an accused person to rebut the presumption raised thereunder, cannot be equated

with the degree and character of proof which under Section 101, Evidence Act rests on the prosecution. While the mere plausibility of an explanation given by the accused in his examination under Section 342 Cr.P.C. may not be enough, the burden on him to negate the presumption may stand discharged, if the effect of the material brought on the record in its totality renders the existence of the fact presumed, improbable. In other words, the accused may rebut the presumption by showing a mere preponderance of probability in his favour, it is not necessary for him to establish his case beyond a reasonable doubt.

9. Another aspect of the matter which has to be borne in mind is that the sole purpose of the presumption under Section 4(1) is to relieve the prosecution of the burden of proving a fact which is an essential ingredient of the offences under Section 5(1)(2) of the Prevention of Corruption Act and Section 161, Penal Code. The presumption therefore can be used in furtherance of the prosecution case and not in derogation of it. If the story set up by the prosecution inherently militates against or is inconsistent with the fact presumed the presumption will be rendered sterile from its very inception. If out of judicial courtesy it cannot be rejected out of hand as still-born.

31. To the same effect is the judgment delivered in *Ram Swaroop Rathore v. State of M.P.* . In the aforesaid judgment since the complainant was not examined, following observations were made:

12. For the purposes of proving a case under Sections 7 and 13 of the Prevention of Corruption Act the prosecution is obliged to prove that there was demand of money which was not legal or in other words that the public servant was demanding illegal gratification in respect of an official act and he in fact received or obtained the money as an illegal gratification, by corrupt or illegal means or by abusing his position as a public servant, or while holding office as a public servant only then a person can be convicted. The recovery dehorn the demand would not be sufficient to convict the accused.

13....

14. Undisputedly the complaint Ex. P.14 was made by C. Bhhatacharya. The said C. Bhhatacharya has not been examined by the prosecution. The learned trial Court has observed that number of the summons were issued for C. Bhhatacharya to secure his attendance but every time the Court was informed that his whereabouts were not known. Similarly reports about Som Shekhar were received that he had gone to Dubai. Similarly for witness Ramesh Dhage, the Court was informed that the witness Ramesh Dhage was not traceable. The learned trial Court without appreciating the provisions of law that in absence of the examination of the original complainant - the first information report which is a former statement of the first informant does not stand proved. The person who received the report can only prove that such report was submitted before him but he would not be legally entitled to prove the contents of the documents or the correctness of the statements made in the said report. In my opinion, the Court was not justified in observing that in absence of the examination of the complainant if the facts prove that an offence was committed then the Court is competent to convict the accused for an offence under the Indian Penal Code, therefore, in a case like present accused could be convicted. The said principle may be right in some cases where others can prove commission of offence but in a case where the prosecution is required to prove the fact of demand and acceptance of the money then the demand can only be proved by the person from whom it was made. True it is that the other witnesses have said that in presence of them C. Bhhatacharya stated that the accused was demanding Rs. 700/- but the statement made by C. Bhhatacharya that the accused demanded the money could only be proved by C. Bhhatacharya. The person who received the information either on the basis of the written report or from C. Bhhatacharya cannot say that the information supplied to him was true or correct. The fact of demand can only be proved by the person from whom it was made.

32. However, the Apex Court in its judgment delivered in *Kishan Chand Mangal v. State of Rajasthan* : [1983]1SCR569 was pleased to hold that even the circumstantial evidence may prove the factum of demand even if the complainant is not produced in evidence because of his death. The relevant observations made in this regard have been made in paras 11 and 12 of the aforesaid judgment which are reproduced hereunder:

11. It was next contended that once Rajendra Dutt is not available for evidence there is no evidence as to the demand of bribe on Nov. 20, 1974, and it is not open to the Court to spell out the demand from the contents of Ext. P-12. It is undoubtedly true that Rajendra Dutt was dead before the commencement of trial. It is equally true that the F.I.R. lodged by him on Nov. 22, 1974, cannot be used as substantive evidence nor the contents of the report can be said to furnish testimony against the appellant. Such an F. I. R. would not be covered by any of the clauses of Sections 32 and 33 of the Evidence Act and would not be admissible as substantive evidence. The question still remains whether there is any evidence of demand of bribe on Nov. 20, 1974, in this case. A fact may be proved either by direct testimony or by circumstantial evidence. If the appellant did not visit the Factory of Rajendra Dutt on Nov. 20, 1974, and made no overtures demanding the bribe, on what rational hypothesis can one explain the visit of Rajendra Dutt to the office of Dy. S.P., A. C. D. on Nov. 22, 1974; his producing currency notes worth Rs. 150/-; a superior officer like the Dy. S.P., A. C. D., making all arrangements for the trap and the raiding party going to the house of the accused on Nov. 22, 1974? The visit of Rajendra Dutt soon followed by the raiding party at the house of the accused on November 22, 1974, is admitted. Coupled with this, the fact that Keshar Mal, P. W. 2 in his evidence stated that after Rajendra Dutt entered the room in which appellant was sitting, Rajendra Dutt on entering the room asked the appellant, 'Hallo, how do you do'. He further stated that the appellant replied, 'I am sick and suffering from cold'. He deposed that thereafter the appellant asked, 'Have you brought the money', whereupon complainant Rajendra Dutt replied, 'Yes, I have brought the money'. He further stated that thereafter Rajendra Dutt took out the amount of currency notes from his diary and give the same to the appellant who took the amount and kept it under the pillow on the cot. If there was no prior demand the subsequent events remain unexplained as also the demand as deposed to by P. W. 2 Keshar Mal. But Mr. Anthony urged that this part of the evidence of Keshar Mal cannot be accepted because he has not stated this fact in his statement recorded in the course of investigation. Simultaneously it was pointed out that the other motbir Ram Babu is totally silent in his evidence about this conversation between the appellant and the complainant. Undoubtedly, the omission in the police statement of Keshar Mal and

non-mentioning all these facts by the co-motbir would raise some doubt in the mind of the Court about this conversation but as pointed out earlier there are tell-tale circumstances which do indicate that there must have been a demand and, therefore, these circumstances as hereinbefore set out will render support to the statement of Keshar Mal that the demand at the time of visit of Rajendra Dutt must be pursuant to earlier demand by the appellant. Therefore, it is not proper to say that there is no evidence of the demand of bribe as on Nov. 20, 1974.

12. It was next contended that if a bribe is demanded and agreed to be paid and if the complainant was contemplating not to pay the bribe but was thinking of initiating action against the officer demanding the bribe, obviously for the success of the trap to be arranged the time and place of meeting would be arranged and if it be so it would be mentioned in the F. I. R. It was said that the very absence of it would show that there was neither a demand of bribe nor any action was contemplated on Nov. 20, 1974, as is now sought to be made out and, therefore, the Court should not accept any evidence with regard to the trap. In view of the admission of the appellant in his evidence that Rajendra Dutt followed by a raiding party came to his house also used as residence-cum-office around 4.30 p.m. on Nov. 22, 1974, omission to mention about the time and place of future meeting in the F. I. R. Ext. P-12 loses all significance. It is equally possible that on the very day when the appellant visited the factory of Rajendra Dutt and demanded bribe, Rajendra Dutt may not have immediately planned to rush to the Anti-Corruption Department. He had declined to give the bribe. In his view his factory was not covered by the Factories Act. These are the averments in ExP-12. They are not being relied upon as substantive evidence but are used to explain the conduct of Rajendra Dutt which has evidentiary value. If Rajendra Dutt did not negotiate giving the bribe and did not agree to give the bribe though the appellant persisted in the demand and threatened to involve him in Court cases, the question of any arrangement for any time and place for giving the bribe does not arise and obviously it could not have found its place in the F. I. R. Such things find mention in an F.I.R. only when the victim agrees to grease the palms of the officer. Absence in such a situation of such averments in Exhibit P-12 in this case is both natural and obvious.

33. The proposition laid in the aforesaid Judgment was not disputed in the later Judgments as stated above, thus, the submission made by the learned Counsel for the appellant that in view of non-appearance of the complainant, the question of demand cannot be presumed is not correct. More so when there are documents available on record, i.e., the pre-raid and post-raid proceedings, recovery of the money in the form of the notes which were handed over by the complainant to the ACB Branch and which were treated with phenolphthalein powder and which were handed over to the complainant for passing the said amount to the appellant, Neeraj Dutta and the recovery thereof from appellant, Sh. Yogesh Kumar which is even admitted by the appellant in his statement under Section 313 Cr.P.C.

34. It is true that in the case of *M. Abbas v. State of Kerala* : (2001)10SCC103 it has been held:

10. The presumption under Section 4(1) in reference to an offence under Section 161 IPC is, as already noticed, a rebuttable presumption. The only evidence led in this case to establish charge under Section 161 IPC of the appellant having received gratification other than legal reward, as a motive or reward for doing or forbearing to do any official act in the exercise of his official functions to favour the prime mover is the statement of the Contractor, PW 2. As already noticed, the Contractor has given different versions of the occurrence in his statement before the Vigilance Wing and in the court. At the trial, he has not supported the prosecution case fully. On the other hand, the explanation given by the appellant both during the cross-examination of prosecution witnesses and in his own statement recorded under Section 313 Cr PC is quite plausible. Where an accused sets up a defence or offers an explanation, it is well settled that he is not required to prove his defence beyond a reasonable doubt but only by preponderance of probabilities. On the prosecution's own showing, in this case, that onus can be said to have been duly discharged by the appellant, more particularly, when the prosecution did not lead any evidence to show as to who made the payment to Kamalasanan who had removed the bump from the road, which bump was otherwise required to be removed by PW 2 for getting refund of his earnest money and security. Maybe, the allegation that the appellant accepted the amount as bribe to process his refund application is true but the court cannot convict an

accused only on such probability or suspicion, howsoever strong it may be. 'Between may be true and must be true, there is a long distance to travel' and in this case the prosecution has failed to travel that distance through any unimpeachable evidence. The case of the prosecution has not been established beyond a reasonable doubt.

35. In view of the aforesaid even the judgment delivered in the case of Trilok Chand Jain (Supra), Hukumat Rai Nigam (Supra) and the judgment delivered in the case of M. Abbas v. State of Kerala (supra) does not come to the rescue of the appellant.

36. No one can dispute the preposition laid in the aforesaid Judgment but it will depend on the facts of each case. However in the facts of this case the aforesaid Judgment is of no consequence for the reason that in the present case the prosecution has established its case beyond reasonable doubt while the defence is improbable for the following reasons:

i. The money paid by the complainant to the ACB Branch for the purpose of meeting the demand of appellant Neeraj Dutta in the light of exhibit PW 5/A stands proved by the pre-raid and post-raid proceedings.

ii. The money brought by the complainant in the form of GC Notes were treated with Phenolphthalein powder and those very notes were then recovered from appellant Yogesh Kumar to whom admittedly Neeraj Dutta paid the said amount.

iii. The story that the said amount was paid for payment of any electricity bill has not been substantiated by the appellant either in the form of cross-examination of the witnesses or in her statement under Section 313 Cr.P.C. or by leading any cogent evidence inasmuch as she is unable to explain as to whether the electricity bill of which demand was to be made. No electricity bill has been brought on record till she led the defence evidence. The question of demand note was not even put to the prosecution witnesses. No record has been produced by the appellant that the complainant was having a running meter in his shop at the time when the complaint was made or that any bills used to be issued for any such electricity meter for which she was required to make a deposit as alleged.

iv. It is highly improbable that anyone will accept a lesser amount when the said amount is to be deposited with a third party.

v. The contention by the appellant that she was not in a position to help is misconceived as she was an employee of DVB or an assistant and being an employee of DVB she was in a position to help the complainant inasmuch as there is nothing on record that the electricity meter was in operation and in existence at the relevant time.

37. It may also be observed here that the complaint, Ex. PW5/A has been proved by PW5 who has categorically stated that the said complaint was made by the deceased complainant in his presence and he signed the same in his presence. He also signed the complaint at Point 'A'. The Raid Officer, PW-6 also supported PW-5 and therefore there is no reason to disbelieve the case of the prosecution to the extent that a demand was made by the appellant from the complainant as narrated in Ex. PW5/A.

38. Now coming to the issue of investigation not done by the authorized officers as Shri O.D. Yadav PW-6 and Niranjana Singh PW-7 were the inspectors at the relevant time and were neither DCP nor ACP nor were authorized to investigate the matter under Section 17 of the Act. I hold that this issue is no more res-integra and stands settled in view of the judgment delivered by the Apex Court in the case of H.N. Rishbud and Anr. v. State of Delhi : 1955 CriLJ526 where it was held 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 Cri. Appeal No. 1289/2008 where the case of Bhajan Lal v. State of Haryana : 1992 CriLJ527 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'.

39. 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 : 1955 CriLJ526 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 to 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 to 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 537 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's case : 1992 CriLJ527 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 authorizing 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.

40. In view of the aforesaid authoritative pronouncement 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.

41. Even if the story put up by the appellant that the money was passed over to her along with an electricity bill no explanation has been furnished as to why the bill if at all it was given to the appellant by the complainant for depositing was not produced by her, at the time of raid or immediately thereafter and why it was allowed to be collected by PW-7 at a very later date. In fact, the story of the bill issued in the name of the complainant for sanctioning additional load has not even been substantiated by the appellant even in her defence because except for producing the bill DW1/A no other record about making of any application by the complainant, any report of the verification of such application or running of an electricity meter in the shop premises of the complainant has been brought on record by the appellant.

42. It is also surprising that nothing has been brought on record to prove that the complainant had any enmity with the appellant Neeraj Dutta or Yogesh Kumar so as to falsely implicate them in the present case.

43. In these circumstances I am satisfied that in the facts of this case while the prosecution was successful in proving the demand of the bribe and acceptance thereof, as well as recovery of the tainted money from Sh. Yogesh Kumar to whom admittedly the money was given by Neeraj Dutta after the receipt thereof from the complainant, the appellant has not been able to prove her defence even by taking into consideration the theory of preponderance of probability. The appeal is consequently dismissed. In the facts of this case, there is no need to interfere with the sentence awarded to the appellant.

44. The appellant shall surrender before the trial Court concerned immediately and in any case not later than one week from today failing which her bail bonds will stand forfeited and the trial Court will take appropriate proceedings to take the appellant into custody and to send her to jail for enabling her to undergo the sentences awarded to her. Consequently, the appeal filed by Neeraj Dutta being

Criminal Appeal No. 4/2007 is dismissed.

Crl. M.A. 1592/2009 in Crl. App. 4/2007

Insofar as the application moved by the appellant under Section 391 Cr.P.C. is concerned, in the facts of this case, I find no justification to permit the appellant to lead any further evidence as prayed for by her. Accordingly, the said application is also dismissed.

45. As far as Yogesh Kumar is concerned, for the reasons stated above, he stands acquitted. His bail bonds shall stand discharged. Thus, the appeal filed by Yogesh Kumar being Criminal Appeal No. 15/2007 is allowed.

46. Trial Court record be sent back forthwith.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com