

Manohar Lal Vs. State

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Court : Jammu and Kashmir

Decided On : Jul-19-2005

Reported in : 2006CriLJ1029

Judge : S.K. Gupta, J.

Acts : Jammu and Kashmir Prevention of Corruption Act, 2006 - Section 5(2);
;Ranbir Penal Code (IPC), 1982 - Section 161; ;Code of Criminal Procedure (CrPC) - Section 342

Appeal No. : Crl. A. No. 1 of 1999

Appellant : Manohar Lal

Respondent : State

Advocate for Def. : K.N. Bhat, Adv.

Advocate for Pet/Ap. : Sunil Hali, Adv.

Disposition : Appeal allowed

Judgement :

S.K. Gupta, J.

1. The accused/appellant (Manohar Lal) has been convicted by the learned Special Judge, Anti-Corruption, Jammu, vide his judgment and order dated 31-12-

1998 under Section 5(2) of the Jammu and Kashmir Prevention of Corruption Act, 2006 BK and sentenced to undergo rigorous imprisonment for two years and a fine of Rs. 1,000/- and in case of non-payment of fine, to further undergo three months simple imprisonment. The accused/appellant was further convicted for offence under Section 161, RPC and sentenced to suffer two years' rigorous imprisonment and a fine of Rs. 1,000/- and in default of payment of fine also to undergo three months' simple imprisonment. Both the sentences have been ordered to run concurrently. Aggrieved by the judgment and order propounded by the learned Special Judge, Anti-Corruption, Jammu, the accused/appellant has impugned its correctness in this appeal.

2. The case of the prosecution, enumerated from the record, in narration, is that Narinder Sharma, complainant, had applied for telephone connection and deposited Rs. 1,000/- towards security in the office of Telecom District Manager (TDM), Jammu in the year 1992. The complainant was informed by the Telephone Department through a communication dated 31-8-1992 with regard to his name figuring at Serial No. 2678 in the waiting list. The complainant, however, somewhere on 31-3-1994 learnt that the telephone connections up to Serial No. 2800 in the waiting list have been sanctioned. He, accordingly, approached the office of the TDM, Jammu and met Mr. Satish Bakhri, Junior Telecom Officer there. When the advice note of the complainant was not traceable, Mr. Satish Bakhri advised him to check the same from the office of the TDM, Rani Talab, Jammu and secure the advice note. It is further stated that the complainant after securing the advice note on 5-4-1994 again went to the office of the Sub-Divisional Officer (Phones) SDO (P), Gandhi Nagar, Jammu and, while in search of Mr. Satish Bakhri somebody told him to meet Manohar Lal, cashier-cum-clerk, posted in the said office. The complainant when met Manohar Lal, the latter told him to apply for the change of address as the same was not clear. The complainant made an application and secured the approval of the SDO (P) with regard to the change of address on 6-5-1994, and, thereafter, accompanied by Suresh Kumar, his friend, again met the accused/ appellant in the office. Further case of the prosecution is that the accused/appellant demanded Rs. 600/- from the complainant for providing the telephone connection. A written complaint EXPW 1/2 with regard to the demand of Rs. 600/- as bribe by the accused/appellant was,

however, made by the complainant to Dy. SP, CBI, Jammu. The complainant, however, presented six hundred rupee notes to the Dy. SP, CBI and the latter noted down their numbers and then treated the currency notes with phenolphthalein powder and thereafter gave back to the complainant, Narinder Sharma, which he kept in the pocket of his shirt. P.W. Jagdev Singh accompanied him as a shadow witness as complainant's friend. The complainant was asked to give the signal by combing his hair with fingers of either hand on the acceptance of the bribe money by the accused/appellant. Elias Rapsang, Photographic Officer and P.W. Jagdev Singh were the independent witnesses of raiding party that proceeded to the office of the SDO (P), Gandhi Nagar, Jammu. P.W. Jagdev Singh accompanying the complainant went inside the room and other members of the raiding party in their position remained outside the office of the SDO (P), Gandhi Nagar, Jammu. The complainant gave Rs. 600/- to the accused/appellant and the latter accepted the bribe money with his left hand and after counting the bribe money he put the same on the table under the stamp pad. The complainant when gave signal as fixed earlier during pre-trap exercise, the raiding party went inside the room and the complainant pointed towards the accused/appellant to whom he had paid the money and he was placed under arrest. Thereafter, both the hands of the accused/appellant were dipped into the two separate glasses containing sodium carbonate solution with the result the white solution turned into pink. The bribe money recovered from the table of the accused/appellant was seized by Satish Chander, Dy. SP, Investigating Officer, CBI and the number of the currency notes were also tallied with those mentioned in the handing over memo. A case was registered by the CBI against the accused/appellant for offences under Section 161, RPC and Section 5(2) read with Section 5(2)(d) of the Jammu and Kashmir Prevention of Corruption Act, 2006 and investigation ensued. On completion of the investigation and after securing the requisite sanction, the accused/appellant was sent up to face the trial before the competent Court. The trial Court, after holding the trial and hearing the parties, held the accused/appellant guilty of committing the offences under Section 5(2) read with Section 5(2)(d) of the Jammu and Kashmir Prevention of Corruption Act, 2006 and also under Section 161, R.P.C. and sentenced him accordingly.

3. Mr. Sunil Halt, learned Counsel appearing for the accused/appellant, at the threshold, challenged the legality of the judgment passed by the trial Court on the ground that the material independent witnesses, namely, Suresh Kumar and Elias Rapsang, though were associated with the trap proceedings have been kept back and they have not been examined leaving no pre-trap evidence except that of the complainant. 'Keeping the money on a table by the accused after receiving bribe is unusual and against the normal conduct.' No witness from the locality has been associated in the trap proceedings. Mr. A.K. Bhat, sitting in the same room on the other table was not made a witness in the case and all these circumstances when taken together improbabilise the prosecution case. Mr. Hali further submitted that even the sanction has been granted without application of mind as the CBI had sent draft sanction to the sanctioning authority which amounts to influence and pollute the mind of the sanctioning authority and, thus, renders the sanction invalid. Whereas Mr. K.N. Bhat, learned Counsel appearing for the State, argued that the trial Court has dealt with every aspect of the matter and the essential ingredients have been proved by the credible testimony of the witnesses examined by the prosecution during the trial and, thus, the judgment and order impugned does not suffer from any illegality, frailty or factual error that requires interference in this appeal.

4. I have heard the learned Counsel appearing for the respective parties in detail and minute examination of the facts on file touching the matter in controversy has also been made.

5. In order to prove offences under Section 5(2) read with Section 5(2)(d) of the Jammu and Kashmir Prevention of Corruption Act, 2006 and Section 161, RPC, the ingredients which are incumbent upon the prosecution to be proved conclusively are :

1. Whether the accused was posted and working as public servant at the time of commission of offence;
2. While acting as such public servant, he demanded illegal gratification for doing an official act; and

3. That for doing such act, he accepted for himself or for some one else, illegal gratification of a pecuniary advantage.
6. In a criminal case, it is incumbent upon the prosecution to prove the offence against the accused with which he stands charged by convincing, reliable, cogent, positive and unimpeachable evidence beyond any pale of doubt in order to hold him guilty. Link after link must be forged so firmly in the credible testimony of the witnesses that manacles the accused inescapably for the commission of crime. In a case of trap, it is legally imperative upon the prosecution to prove that the accused demanded bribe and pursuant to such demand bribe money was paid to the accused and that the same has been recovered from his possession, The trial Court in this case has found that the prosecution case is established in strongly placing reliance on the trap witnesses including the complainant beyond any shadow of doubt.
7. As regards the ingredients of demand for illegal gratification alleged to have been made by the accused/appellant, the trial Court found that besides the statement of the complainant, P.W. Jagdev Singh, who accompanied him as a shadow witness, also made a statement with respect to the demand. According to the complainant, the raiding party was constituted after registration of a case on his complaint, by Satish Chander, Dy. SP, CBI, Investigating Officer. He gave Rs. 600/- notes to Satish Chander, Dy. SP, CBI, which were treated with phenolphthalein powder, and handed over to the complainant, Narinder Sharma, for payment to the accused on demand after the demonstration was given in respect of the reaction in presence of the complainant, Narinder Sharma, Jagdev Singh and Elias Rapsang. It is also in the evidence of the complainant that he was instructed by the Dy. SP, CBI, not to pay the amount without demand to the accused. The witness further stated that P.W. Jagdev Singh was asked to accompany him as a shadow witness pretending to be a friend of the complainant. The complainant was also told that after the bribe money had been received by the accused/appellant, he will give signal by combing his hair with fingers of either hand. When the raiding party reached outside the office of SDO (P), Gandhi Nagar, Jammu, he along with Jagdev Singh went inside the room where accused/appellant was sitting in his chair with the table in his front. It is also in the

evidence of the complainant that the accused/appellant demanded Rs. 600/-, which were accepted by him as bribe money in presence of P.W. Jagdev Singh and after counting the money, the accused/appellant kept it on the table under the stamp pad. The raiding party entered the room on the signal of the complainant and on the latter's pointing towards the accused/appellant, Satish Chander, Dy. SP, CBI, caught hold of both the wrists of the accused/appellant. The hands of the accused/appellant were dipped in two glasses containing solution of sodium carbonate. The colour of the solution turned pink. The solution was seized and sealed in two different bottles marked as EXPW-1/4 and EXPW-1/5. The bribe money, according to the complainant, was recovered from the table of the accused/appellant and after comparing and tallying the numbers, the currency notes were seized. The complainant further stated that one Mr. A.K. Bhat was also in the room where accused/appellant was sitting at the time of trap.

8. Whereas P.W. Jagdev Singh was associated at the time of trap and he acted as a shadow witness at the time of raid. The witness, however, stated to have been deputed by Public Relations Officer, Ministry of Defence on 6-4-1994 and accompanied the Dy. SP, CBI. The witness has taken to the office of the CBI where complainant-Narinder Sharma and some other persons were already sitting. The complainant made a complaint with regard to the telephone connection. Currency notes of Rs. 600/- were given by the complainant to the Dy. SP, CBI, and the latter treated the said currency notes with phenolphthalein powder and noted down their numbers. The currency notes were thereafter returned to the complainants with the direction to be given to the accused/appellant on demand. After giving the demonstration, the hands of the complainant were dipped into the solution, which turned pink vide EXPW-1/3. The raiding party then proceeded towards office of SDO (P), Gandhi Nagar, Jammu, with the instructions by Satish Chander, Dy. SP, CBI, to watch if the bribe money is paid forcibly to the accused or on demand of the accused/ appellant. The witness accompanied the complainant inside the room of the accused and saw another Kashmiri Pandit sitting there along with accused/appellant. It is also in the evidence of this witness that when the complainant introduced him to the accused/appellant, as his friend, the accused asked him as to what service he could have rendered. The accused/appellant reminded him of what was told in the morning. On this, the

complainant asked the accused/ appellant to make some deduction, but the latter declined to do so and told if Rupees 100/- or Rs. 150/- are paid, it will be the responsibility of the complainant with regard to the installation of the telephone connection, in demanding Rs. 600/-. Before making the payment, the complainant also ensured that in case he is paid Rs. 600/-, the entire work will be done by the accused and paid the bribe money. The accused, according to the witness, received the bribe money and counted with his left hand and kept the same on the table under the stamp pad. The accused also assured the witness when latter asked whether the work of complainant will be done. On a signal given by the complainant, the raiding party came in the room and on asking the complainant pointed towards the accused/appellant having received bribe money. The accused was caught hold of his wrists and fingers of both his hands were dipped into two separate glasses containing solutions and the colour of solutions turned pink, and solutions of both the glasses were transferred into two different bottles and sealed and marked as EXPW-1/4 and EXPW-1/5.

9. Mr. Sunil Hall, learned Counsel appearing for the accused/appellant, has vehemently urged that P.W. Jagdev Singh is a stock witness, his evidence cannot be believed. His further submission is that P.W. Jagdev Singh, is not an independent witness, having accompanied the trap party, and his evidence cannot be said to have provided corroboration to the testimony of the complainant. The Court must have insisted on an Independent corroboration of the complainant in regard to the demand of bribe money before the trap was laid. According to Mr. Hall, when complainant first visited the accused/appellant in regard to the telephone connection, he was accompanied by Suresh Kumar. The evidence of Suresh Kumar was very vital to prove that the accused/appellant demanded bribe from the complainant for the installation of the telephone connection. Undoubtedly, it was a pre-trap evidence, but it certainly provides a significant link to the demand and acceptance of the tainted money by the accused/ appellant from the complainant when he visited next day along with the shadow witness and which penultimately led to the recovery of the bribe money from table of the accused/appellant. Further contention of Mr. Hali is that the trial Court has misappreciated the evidence and the impugned judgment and order has resulted in manifest injustice to the accused/appellant.

10. Whereas Mr. K.N. Bhat, learned Counsel appearing for the State, on the other hand, submitted that the evidence of demand and acceptance of the bribe money by the accused/appellant, provided by the complainant stood fully corroborated in the testimony of P.W. Jagdev Singh in material particulars. P.W. Jagdev Singh was a shadow witness with the complainant and has given a convincing narration of the entire trap demonstration as well as the actual trap by the CBI. It is also in the evidence of Jagdev Singh as to what transpired between the accused and the complainant-Narinder Sharma with regard to the demand of Rs. 600/- for the installation of the telephone connection and that the bribe money when paid by the complainant was accepted by the accused and kept on his table under the stamp pad. It can conveniently be termed as corroboration of the evidence of alleged demand for bribe money having been made by the accused/appellant and also its acceptance by him. The evidence, therefore, cannot be said to be improbable or unreliable.

11. Adverting to the factual matrix of the case, it is clearly gatherable that no independent evidence has been produced from which any corroboration could be found to the evidence given by the members of the trap party including the complainant. P.W. Jagdev Singh admittedly accompanied the complainant as a shadow witness. He cannot be termed as an independent witness and his evidence could not be implicitly relied upon.

12. The Apex Court, in case Ram Prakash Arora v. State of Punjab : 1972 CriLJ1293 , while dealing with the evidence of the trap witnesses, observed that evidence of interested and partisan witnesses, who are concerned in the success of the trap, must be tested in the same way as that of any other interested witness. In a proper case the Court may look for independent corroboration before convicting the accused persons.

13. There is no trap witness who is independent in the present case, providing corroboration with the evidence given by the members of the raiding party. This vital aspect manifestly seems to be not present in the mind of the learned Special Judge, Anti-Corruption, Jammu, at the time of recording conviction of the accused.

14. Again, the Apex Court in *Darshan Lal v. Delhi Administration* : 1974 CriLJ307) while dealing with the evidence of the trap witnesses, held as under :

6. Having regard to all these circumstances, we think it is a fit case where the Courts below should have required independent and trustworthy corroboration of the evidence of Niranjana Lal and Satish Chandra who had laid the trap. In *Ram Prakash Arora v. State of Punjab* : 1972 CriLJ1293 this Court, speaking about the evidence of trap witnesses, observed :

(They) were interested and partisan witnesses. They were concerned in the success of the trap and their evidence must be tested in the same way as that of any Interested witness and in a proper case the Court may look for independent corroboration before convicting the accused person.

15. Similarly, in *Som Parkash v. State of Punjab* : 1992 CriLJ490 , the Supreme Court, while considering the evidence of the trap witnesses in a bribe case, held as under :.We agree with the learned Counsel for the appellant that in the face of the finding that the witnesses who formed part of the raiding party were not independent and the evidence regarding handing over money to the appellant being unbelievable, the conviction of the appellant cannot be sustained. The guilt of the appellant has not been proved beyond reasonable doubt and as such the benefit must go to him.

16. In the instant case, there is no evidence of handing over of the bribe money to the accused except the complainant and the shadow witness P.W. Jagdev Singh, a member of the trap party. Relying on the ratio of the aforesaid judgment, the requirement to have independent witness to corroborate the evidence of the trap party is to be viewed from a realistic angle. The evidence of Jagdev Singh with regard to the demand and handing over of the tainted money by the complainant, to the accused/appellant, who later on kept it on the table under the stamp pad, therefore, without corroboration from independent testimony, cannot be acted upon without the help of further corroboration.

17. It is significant to point out that P.W. Jagdev Singh, relying on whose evidence without corroboration from independent witness, the trial Court has recorded the

conviction of the accused/appellant, in his sworn testimony categorically stated that when he accompanied by the complainant went inside the office room of the accused, a Kashmiri Pandit was also sitting along with the accused. Even Dy. SP, CBI, Satish Chander, in his evidence categorically stated that one Ashok Kumar Bhat was also present in the room of the accused at the time of the trap. When it has been found in the evidence of both Jagdev Singh P.W. and Satish Chander, Dy. SP, CBI, that A.K. Bhat was sitting along with the accused/appellant at the time when the demand for bribe was made and accepted by the accused/appellant and thereafter the accused/appellant handled with the bribe money and kept it on the table, it is not understandable as to what prompted the prosecution not to examine A.K. Bhat, who could have provided independent corroboration to the evidence of the complainant and Jagdev Singh, a member of the trap party. This casts a serious speck of doubt on the credibility and reliability of the evidence of the P.W. Jagdev Singh. It is, therefore, highly unsafe to sustain the conviction of the accused/appellant based on unbelievable and unreliable evidence.

18. Further dent is caused to the prosecution case when complainant-Narinder Sharma, in his evidence, stated that the accused/appellant after accepting the tainted money counted it and kept on the table, and in the meanwhile, one Sikh gentleman came there to see the accused/appellant and on seeing him the accused kept stamp pad on the bribe money. Even the Sikh gentleman, Deedar Singh, also has not been produced and examined by the prosecution to support the version of the complainant and Jagdev Singh with regard to the demand and acceptance of the bribe money by the accused/appellant. The evidence of Deedar Singh has become significant particularly when examined by the accused/appellant as defence witness, stating that the complainant shook his hands with the accused/appellant. The Sikh gentleman was Deedar Singh produced as defence witness, who, according to Mr. Hali, stated that the complainant shook his hands with the accused/appellant, while he was talking to the accused. Further submission of Mr. Hali is that the tainted money was with the complainant when he shook his hands with the accused/appellant, the possibility of phenolphthalein powder attracting the hands of the accused/appellant cannot be ruled out. Though the identity of the Sikh gentleman has not been given by the complainant, but certainly it has come in his evidence that Sikh gentleman came to

the accused/appellant at the time when the tainted money was demanded and accepted by the accused/appellant. Even the complainant did not rule out the presence of Deadar Singh at that point of time in the room talking to the accused/appellant. This witness has also not been produced and examined by the prosecution. Deadar Singh was the independent witness and having not been examined by the prosecution, but produced by the accused/appellant in defence, pointing out that one of the two persons, who entered the room and talked to the accused/appellant and shook hands with the accused/appellant, renders the prosecution case highly improbable and unbelievable. Nothing inherently improbable has been found in his testimony to cause a speck of doubt on his veracity. The evidence provided by Deadar Singh is reliable and convincing and is, thus, believable and further makes the prosecution case shaky and untrustworthy. When the accused shook his hands with the complainant, it was but natural that phenolphthalein powder would have been applied to his hands and when dipped into solution containing sodium carbonate, the colour of solution changed and turned pink.

The possibility of phenolphthalein powder having been transferred into the hands of the accused/appellant in the manner alleged by Mr. Hali in his forceful arguments based on the evidence of Deadar Singh, cannot be ruled out.

19. P.W. Suresh Kumar was the only witness of pre-trap arrangement and was in the company of the complainant on the morning of 6-4-1994 when the accused/appellant demanded an amount of Rs. 600/- as illegal gratification. This witness has also not been examined though material and his evidence has been withheld without any plausible explanation. He was an essential witness to the unfolding of the narrative on which the edifice of the prosecution has been raised. The non-examination of P.W. Suresh Kumar further materially affected the credibility of the prosecution case. Elias Rapsang, Photographic Officer, though joined as an independent witness during the trap besides A. B. Chowdhary, Dutt Kumar and Shiv Kumar, but none of them has been produced and examined in the case. Their evidence having been withheld without reason further proved fatal to the prosecution case.

20. Apart from what has been stated above, another aspect of the case that cannot be overlooked is as to why the appellant/accused demanded the illegal gratification when as per the evidence of Smt. Avinash Kour, the Advice Note after sanction had been issued by the O/O TDM, Rani Park, Jammu. It clearly demonstrates that neither the correct approach in the case nor certain important aspects, which have been noticed above, appeared to have been in mind of the Special Judge while appreciating, evaluating and estimating the evidence to reach its conclusion. Moreover, the complainant's evidence does not inspire confidence without corroboration from independent witnesses because he was aggrieved against the bribe taker and, therefore, interested in the success of the trap. His evidence has to be tested before placing reliance in the same way as that of any other interested witness. Therefore, the substratum of evidence provided by the complainant springs from a source which is tainted on account of animosity against the accused/appellant, renders it highly incredible and untruthful and, thus, cannot be believed. Thus, in this background, it was essential and proper for the trial Court to look for unimpeachable evidence as to the demand and acceptance of the bribe money by the accused/appellant from the complainant, so as to prove the guilt of the accused/appellant beyond any pale of doubt. The trial Court, therefore, has misdirected itself by such patent wrong and tenuous considerations, which resulted in unmerited conviction of the accused/appellant. The witnesses relied upon are interested without corroboration from independent source, cannot be made basis of the conviction.

21. In a case of bribery, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence is not reliable. The tainted currency notes are stated to have been recovered when lying on the table of the accused/appellant under the stamp pad. In this case, when the integral part of the story given by the trap witness not supported by the independent witnesses is not believed, then the entire case crumbles down like pack of cards. Even the accused/appellant under Section 342, Cr. P.C. has specifically denied either the acceptance of money or the recovery of the same. Thus, assuming that the recovery has been made from the table of the accused/appellant, that itself cannot prove the charge against the accused/appellant, in the absence of any evidence to prove payment of bribe or to

show that the appellant/accused voluntarily accepted the money.

22. Another limb of argument advanced by Mr. Hali, accused/appellant's-advocate, is that sanction for the prosecution of accused/appellant accorded by P.W. H.R. Shukla, the then District Manager, Telecom, Jammu, is without application of mind as the material facts constituting the offence were never placed before him. According to Mr. Hali, the sanction, in fact, was accorded on the basis of draft sanction order sent by Satish Chander, Dy. SP, CBI, Investigating Officer, to the sanctioning authority and the same is, therefore, invalid.

23. Undoubtedly, the sanction to prosecute is an important matter. It constitutes a condition precedent to the institution of the prosecution and the Government has an absolute discretion to grant or withhold the sanction. In *Basdeo Agarwalla v. Emperor* AIR 1945 FC 16 : 1945 (46) Cri LJ 510, and again in *Mansukhlal Vithaldas Chauhan v. State of Gujarat* : 1997 CriLJ4059 , the Apex Court, while considering the question of validity of sanction, held as under :

Since the validity of 'Sanction' depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority 'not to sanction' was taken away and it was compelled to act mechanically to sanction the prosecution.

17. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government servants against frivolous prosecutions.

24. It is bounden duty of the prosecution to prove that a valid sanction has been granted by the sanctioning authority after it was satisfied of the material facts placed before it that a case for sanction has been made out constituting the offence. This should be done either by production of original sanction containing the facts constituting the offence and the grounds of satisfaction or by adducing evidence to show the facts placed before the sanctioning authority and the satisfaction arrived at by it.

25. In the present case, the sanction of the accused/appellant was accorded by H.R. Shukla, the then District Magistrate, Telecom, Jammu. He was produced as a witness to prove the sanction for launching prosecution against the accused. The contents of the original sanction placed on record have been proved in the evidence of the sanctioning authority and stated to have accorded the same after perusing the material placed before him and after due application of mind. P.W. H.R. Shukla, however, admitted that the draft sanction order was also sent to him with blanks. On the application of the accused/appellant, the trial Court summoned the record sent by the CBI along with the draft sanction to the TDM, Jammu, for according sanction. The trial Court in its judgment has categorically stated that the record received from the TDM, Jammu also contained photocopies of the FIR, complaint of the complainant, observation-cum-recovery memo, handing over memo, intimation letter to the complainant regarding his waiting number for telephone connection, draft sanction order EXPW-HR, original sanction order, letter of SP, CBI to TDM, Jammu and appointment-cum-posting order of the accused. This clearly shows that evidence of the witnesses collected during investigation (calendar of evidence oral/ documentary) has not been provided by the CBI to the sanctioning authority. That apart, the draft sanction order pertained to the accused/appellant, Manohar Lal. The original order according sanction for prosecution is word by word the same as the draft sanction order sent to the sanctioning authority by the CBI except filling up the name of the sanctioning authority. In such circumstances, oral and documentary evidence constituting the relevant material on which the sanctioning authority has to apply his mind for grant or refusal of sanction has not been provided to him. All these facts when taken together clearly demonstrate that the sanctioning authority, P.W. H.R. Shukla, has only filled in his name in the draft sanction order and put his signatures on the

order according sanction against the accused/appellant without application of mind. What the Court has to see is whether or not the sanctioning authority at the time of giving sanction was aware of the facts constituting the offence and the evidence, oral and documentary, assembled during investigation and applied its mind for the same. The prosecution has not succeeded to prove at the touchstone of the litmus test as laid down by the Apex Court in the aforesaid judgments that the sanction accorded in this case is in accordance with law and is, thus, invalid. Any case instituted without a proper and valid sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio, as is observed by the Apex Court in Mohd. Iqbal Ahmed v. State of Andhra Pradesh : 1979 CriLJ633 . The trial Court has landed in gross error in holding that the sanction for prosecution accorded by the sanctioning authority was valid and in accordance with law.

26. Taking the global view of the matter based on entire substratum of evidence on record, the irresistible conclusion reached is that the prosecution has miserably failed in making out an ex facie case against the accused/appellant to the hilt under Section 161, RPC and Section 5(2) of the Jammu and Kashmir, Prevention of Corruption Act, 2006 BK.

27. In the facts and circumstances of the case, the appeal is allowed and the conviction and consequent sentence recorded by the trial Court against the accused/appellant for offences under Section 5(2) of the Jammu and Kashmir Prevention of Corruption Act, 2006 BK and Section 161, RPC is set aside and the accused/appellant stands acquitted of the offences under Section 5(2) of the Jammu and Kashmir Prevention of Corruption Act, 2006 BK and Section 161, RPC in resultant thereof. The accused/appellant, I understand, is on bail. His bail bonds shall stand cancelled.

28. The record of the trial Court be remitted back forthwith.