

Om Prakash Vs. C.B.i.

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SooperKanoon Citation : sooperkanoon.com/920169

Court : Delhi

Decided On : Aug-04-2011

Judge : M.L. Mehta, J.

Acts : Indian Penal Code (IPC) - Section 120B; [Prevention of Corruption Act, 1988](#)
- Sections 13(1)(d), 13(2), 7; Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : Crl. A. No. 159/2002

Appellant : Om Prakash

Respondent : C.B.i.

Advocate for Def. : Mr.Narendra Mann, Adv.

Advocate for Pet/Ap. : Mr. Sidharth Aggarwal, Adv,

Judgement :

1. This appeal is directed against the judgment dated 26th February 2002 and order on sentence dated 27th February, 2002 of learned Special Judge Shri R.K. Gauba whereby the Appellant Om Prakash was convicted for the offence under Section 120B IPC read with Section 13(1)(d) and 13(2) of the [Prevention of Corruption Act, 1988](#) (for short, "the Act") and Section 7 and Section 13(2) read with Section 13(1)(d) of the Act and was sentenced to undergo rigorous imprisonment for five years with fine of `500/- on each count and in default of payment of fine to further undergo rigorous imprisonment for a term of three

months each. The substantive sentences were ordered to run concurrently.

2. The prosecution case as set out was that Rajesh Kumar (PW2/ Complainant) made a complaint to CBI on 7th April, 1995 against the Appellant/accused. The genesis of the complaint is regarding pendency of an application made by the father of the complainant for grant of license for running a floor mill (chakki). The co-accused Manohar Lal was working as Inspector in the said Licensing Department at the relevant time. PW2 met him on 6th April, 1995, accompanied by one Pradeep Kumar Berry (PW8), an acquaintance of his father. The co-accused demanded a bribe of `10,000/- for issuing license. Of this, he demanded `5,000/- to be paid in his office between 3-5 pm on the next day i.e. 7th April, 1995 and the balance to be paid after the license was issued. The co-accused also informed the complainant that if the bribe money was not paid, the work would not be done. Based on this complaint of PW-2, an FIR was registered which was marked to Inspector R.S. Tokas (PW7), TLO, who decided to lay a trap. He joined J.C. Sharma (PW4) and Amar Singh (PW5), the employees of FCI as independent witnesses. As per the pre-arrangement, the complainant arranged 50 currency notes of `100/- each. Their numbers were noted down and they were given the usual treatment of phenolphthalein powder. PW7 arranged a demonstration and thereafter the treated currency notes were handed over to the complainant with the instructions to pay the same to the accused only on a specific demand being made. PW5 Amar Singh was to be a shadow witness and was instructed to remain close to the complainant. PW8 was allowed to accompany the complainant and the shadow witness. The trap party went to the office of Licensing Department of MCD at about 3.45 pm on 7 th April, 1995. PW2 accompanied by PW5 and PW8 went inside the office to contact the co-accused while other members of the trap party remained outside. After sometime, the complainant PW2 with PW8 and another person, later identified as appellant/accused Om Prakash, were seen coming out of the office and going towards the scooter stand. PW7 accompanied by other members of trap party also reached that place and apprehended the appellant. It is alleged that complainant and shadow witness informed that when they went to the office, the co-accused asked them to hand over the entire money to appellant Om Prakash. Accordingly, while the appellant was coming out of the building with the complainant, he demanded the money from the complainant,

upon which the complainant handed over the money to him. The Appellant accepted the money with his right hand and put the same into the left side pocket of his pant. The Appellant was apprehended and brought to the room of Shri Shiv Kumar (PW3), the Administrative Officer of the Factory Licensing Department. A search of co-accused Manohar Lal was made, but he had managed to slip out and was later apprehended. PW7 got washes of both the hands of the Appellant in separate solutions of sodium carbonate which turned pink. The trap money was recovered and seized. The wash of left side pocket of pant of the Appellant was also taken in separate solution of sodium carbonate which also turned pink. The three washes were put into separate empty bottles and were later got analyzed from CFSL vide report (Ex.PW1/A) confirming the presence of phenolphthalein powder. In the personal search of the Appellant taken on the spot, in addition to cash amount, a bunch of some leaves and keys of Bajaj scooter were also recovered. At the instance of the Appellant, the dickey of the Bajaj scooter was opened. It was found to contain some documents which included the file containing some sheets pertaining to the license applied for by the father of the complainant. The necessary sanction for prosecution was granted by Assistant Civil Engineer, MCD vide order dated 17th June, 1995.

3. The charge-sheet was filed on 10th October 1995. The Appellant pleaded not guilty to the charges framed against him under the aforementioned offences. The prosecution examined as many as 9 witnesses. In his statement under Section 313 Cr.P.C., the Appellant denied that he had gone out with the complainant (PW2) and PW8 on the asking of co-accused Manohar Lal or had demanded money outside the office or that he had received any such money from the complainant. He claimed that he had gone to MCD Office on 7th April, 1995 to deposit license fee pertaining to his license application, where he saw 2-3 CBI officials fighting with security guard of MCD. He intervened and told the officials that public is not permitted inside the hall, but CBI officials started fighting with him, whereafter the complainant forcibly put the tainted money in the left pocket of his pant, which he had taken out and thrown on the ground. He alleged that CBI officials and the complainant had then lifted the money from the ground and forced it into his hand, whereafter he was apprehended and taken to the office of PW3. He alleged that he had been beaten by CBI officials who had thereafter seized his

scooter from his residence. The Appellant examined two witnesses namely DW2 and DW3 as his defence witnesses. The co-accused Manohar Lal (since deceased) had also examined one witness i.e. DW1 in support of his defence.

4. I have heard learned counsel Mr. Sidharth Aggarwal for the Appellant and Mr. Narender Mann for CBI and perused the record.

5. Learned defence counsel submitted that the Appellant was falsely implicated because he had intervened in the quarrel going on between the CBI and the MCD officials and getting offended by the same, PW2 thrust the bribe money into his hands and got him falsely implicated as he was carrying a grudge for not issuing the license in the name of his father. He submitted that the appellant had gone to the office of MCD in connection with his license application and was just standing near the co-accused Manohar Lal. He submitted that the appellant had no role in the issue of licence in the name of complainant and there was no reason or occasion for him to have conspired with co accused Manohar Lal in asking for bribe. He submitted that there was no evidence on record to show any prior meeting of minds between the appellant and the co accused Manohar Lal nor the appellant had the knowledge as to what was the transaction money which was thrust upon him. He submitted that appellant was a stranger and was asked by the co accused to go and take the money. He submitted that no file was recovered from the scooter of the appellant, but the same was recovered subsequently in his absence from the almirah of the co accused Manohar Lal. Learned defence counsel relied upon *Virendranath v State of Maharashtra*, AIR 1996 SC 490

6. On the other hand learned public prosecutor has conceded that there was no case made out against the appellant under Section 7 and 13 of the Act. He submitted that, however, a case beyond doubt was established against him under Section 120B IPC. He submitted that from the facts and circumstances, it would be gathered that there was a conspiracy between co- accused Manohar Lal and the appellant in taking the bribe from the complainant. He particularly, referred to the facts such as presence of the appellant in the company of co-accused Manohar Lal, he being asked by the co-accused to go out, his coming out of the office for accepting bribe money from the complainant, his acceptance of money, recovery

of the same from him immediately after apprehension, washes of his hands and the pant confirming his having handled the bribe money and recovery of files including that of the complainant from the dicky of his scooter parked within the premises of MCD office. He also relied upon the judgment of this Court wherein the evidence of prosecution was relied upon and the co-accused Manohar Lal was convicted for the said offences.

7. It comes out to be an admitted case of the prosecution that an application for grant of license made by father of PW2 was pending for quite a long time with co-accused Manohar Lal, who was working as Factory Inspector in the Factory Licensing Department of MCD at the relevant time. It was mentioned by co-accused Manohar Lal in his statement under Section 313 Cr.P.C that the documents as submitted by the father of PW2 were deficient and some were blank. Though co-accused Manohar Lal had claimed to have written a letter to the father of PW2 in March, 1995 asking him to do the needful with regard to the documents pertaining to the said application, but from the record it would be seen that license file Ex.PW4/D contains a letter dated 24th October 1994 (Ex.PW2/DA) under the signatures of co-accused Manohar Lal whereby certain documents were required to be submitted. It was also stated therein that in case the needful is not done within time, the application would be rejected. No letter of March, 1995 as referred to by co-accused Manohar Lal was seen in the file Ex.PW4/D. Despite the letter dated 24th October 1994 stating that the application will be rejected in case of non-submission of required documents, the matter was kept pending by the co-accused Manohar Lal. The learned Special Judge has rightly recorded that the fact that it was kept pending for quite a long time rather confirms that the dealing hand i.e. co-accused Manohar Lal was waiting for some contact by the applicant and this was a circumstance which rather goes against the co-accused Manohar Lal.

8. As is noted above, the presence of the appellant in the company of co-accused Manohar Lal at the relevant date, time and place is an admitted fact. As per pre-arrangement for laying the trap, PW2 along with PW5 and PW8 had gone to meet co-accused Manohar Lal as per the time given by the latter, a day before. Relevant portion of the testimony of PW2 in this regard is like this:

"Raiding party left the CBI office at around 3.00 pm and reached near MCD office near Kashmere Gate at around 3.45 pm. Myself, Pardeep Berry and Amar Singh then went to the office of accused Manohar Lal and other members of the raiding party took suitable positions. Manohar Lal accused was present on his seat. I said Nameste to Manohar Lal. Manohar Lal responded by saying "Nameste, paise laye ho". I replied "paise laya hun." Manohar Lal enquired "kitne laye ho" and I replied "paanch hazar laya hun." Accused Om Parkash present in the court was also standing near accused Manohar Lal at that time. Manohar Lal told me "main inhe bahar bhej rahan hun paise inhe de dena." I enquired from him "Sir mera kaam ho jayea". On this Manohar Lal replied "mai aapka kaam pura kar doonga." Thereafter, I alongwith Pardeep Berry and Amar Singh came out of the building near the scooter stand. 2 or 3 minutes later, accused Om Parkash came to us and said "paise nikalo". I took out `5,000/- from the pocket of my shirt and handed over the same to accused Om Parkash. Accused Om Parkash accepted said tainted money in his right hand and asked "kitna hain". I replied "paanch hazaar hain gin lo". Thereafter accused Om Parkash started counting said GC notes with both of his hands and kept the same in left pocket of his pant. Meanwhile witness Amar Singh gave signal to CBI by placing his hand on his head. On this CBI team came to the spot and accused Om Parkash was apprehended from his wrists by Inspector Ved Parkash and Inspector S.K. Bhati. Thereafter, accused Om Parkash was brought to the office room of Shiv Lal as officer of MCD. PW JC Sharma searched accused Om Parkash and recovered tainted `5,000/- from the left pant pocket. JC Sharma and Amar Singh were asked to compare the numbers of GC notes with the numbers already noted down and after said comparison GC notes were found to be the same.

9. PW2 further deposed about the washes of the hands and the pocket of pant of the appellant being dipped in separate solutions and their turning pink. He denied the suggestions that on 7th April, 1995, he had no conversation with co-accused Manohar Lal or latter did not ask him to pay the money to appellant outside the office or did not direct the appellant to go outside and take bribe money from him. He also categorically denied the suggestion that appellant did not take the money from him, but the same was forcibly put into his pocket. He also denied that no wash of hands or that of pant of appellant were taken. This witness stood the lengthy cross examination, but nothing could be elicited to doubt his testimony. It is seen that it was nowhere put to him in his cross examination that there was any quarrel between CBI and MCD officials on the issue of entry into the office during impermissible hours or that he was carrying a grudge on account of non-issuing of license in the name of his father.

10. Though PW4, PW5 and PW8 turned hostile on certain aspects, but their testimonies in entirety would show that they have supported the prosecution case. PW4 maintained that pre-determined signal was given by PW5 Mr. Amar Singh and they rushed towards the spot and apprehended the Appellant and that the tainted money was recovered from the left pocket of his pant. He also stated about the washes of hands and the pocket of pant having been taken and the same turning pink in the solution. He categorically denied that when they reached the spot, complainant and appellant were grappling with each other or that the complainant thrust the bribe money into the pocket of the appellant or that the appellant tried to throw that money when he was apprehended. He also deposed about the recovery of files including Ex.PW4/D from the dickey of the scooter of the appellant. He stated that these files were seized vide seizure memo Ex.PW4/C which bear his signatures. PW5, though initially did not support the prosecution case, but when he was cross examined by the learned Public Prosecutor, he admitted having made statement to CBI at the spot after the trap. With regard to the role of the appellant, he stated as under :

**"...Complainant on reaching said counter told that MCD official,
"SAHAB MAIN PAISE LE KE AA GAYA HUN". On this said MCD**

official, signaled with his fingers towards his back where one person was present who is one of the accused present in the court. (Witness has identify accused Om Prakash as the said person). It is correct that on reaching said counter complainant Rajesh Kumar said "Nameste Sir". And on this MCD official sitting at the counter replied, "Nameste, Ha Paise Laye Ho"-. It is also correct that then complainant said "Ha Sir" and the MCD official enquired "Kitne Hain". And on this complainant replies "Sir Pure Paanch Hazaar Hain".

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"It is correct that thereafter we all three came to near the scooter stand behind the hall in which said MCD official was sitting. Accused Om Prakash also came there and said "Lao Kitne Paise Laye Ho". On this complainant Rajesh took out treated GC notes from his pocket and handed over to accused Om Prakash. Accused Om Parkash accepted said money with his right hand and kept it in the right pocket of his pant. I cannot admit or deny if Om Prakash kept said money in the left pocket of his pant. It is correct that accused Om Prakash said "Ha Jaldi Karo Paise Nikalo". It is also correct that after accepting the money accused Om Prakash remarks, "Pure To Hain". It is incorrect to suggest that before keeping said money in his pocket, accused Om Prakash counted the same with both his hands. Actually he checked those GC notes with both his hands and did not properly count the same. (Witness is confronted with portion B to B of his statement Ex.PW5/A where it is so recorded and witness states that he gave said statement to CBI.

11. PW5 also deposed that the scooter of the Appellant was searched vide memo Ex.PW4/C which bears his signatures and that various files were seized including Ex.PW4/D (file of Mr. Lakhmi Chand, father of the complainant). He also stated that all the files were signed by him and Mr. J.C. Sharma (PW4). Suggestions

were put to him, which he denied, that there was exchange of heated words between complainant and MCD officials and when the appellant intervened, the complainant dragged the appellant outside the office of MCD and tried to thrust the tainted money of `5000/- into the pocket of his pant and when the appellant opposed, the complainant by using force, thrust the money inside the left pocket of his pant and on this, the appellant tried to throw out the said money from his pocket. He also denied that co-accused Manohar Lal did not point towards the Appellant to go outside and pay the money to him. In answer to a specific question in the cross examination, he stated as under:

".....My statement recorded by CBI official was read over to me. I stated to CBI that after coming out accused Om Prakash said "Lao Kitne Paise Laye Ho".

(Witness is confronted with his statement Ex.PW5/A, where it is no so recorded, but it is mentioned "Ha Jaldi Karo Paise Nikalo"). It is incorrect to suggest that on the relevant day accused Om Prakash neither demanded nor accepted bribe money from the complainant. It is incorrect to suggest that I did not give pre-appointed signal to CBI team. I do not remember whether or not I mentioned in my statement Ex.PW5/A that JC Sharma caught the accused Om Prakash from his neck. (Witness is confronted with statement where it is so recorded).

12. PW5 also denied that the washes of the hands and that of pant of the appellant were not taken in the manner as stated by him. He further denied the suggestion that the scooter of appellant was not seized in his presence or that it was seized around 12 in the night from his residence. He maintained that the scooter was seized sometime after 5.30 pm. He denied that no file was recovered or seized from the scooter. He maintained that 13-14 files were seized from the scooter of appellant.

13. PW8 stated that he had accompanied the complainant to the office of co-accused Manohar Lal on 6th April, 1995 where the later made a demand of

`10,000/- and asked the complainant to come on the next day along with the money. He has also corroborated PW2 on all material aspects of the prosecution case. The relevant part of his examination concerning the Appellant Om Prakash is like this:

"Myself, complainant Rajesh Kumar and Amar Singh were sent inside the office to contract the accused Manohar Lal. Remaining members of the trap party stayed outside. We all reached at the table of accused Manohar Lal present in the court. Accused Om Prakash was also sitting there. And both of them were having cold drinks. Complainant Rajesh Kumar wished "Nameste" to accused Manohar Lal. On this, Manohar Lal enquired "Paise Laye Ho". Rajesh Kumar replied "Ha Ji Laya Hun" On this Manohar Lal told the complainant to go outside and pay the money to accused Om Prakash, present in the Court (correctly identified). Manohar Lal also said Om Prakash was his own man. On this Rajesh Kumar asked, "Mere Kaam Kaun Karega". Manohar Lal accused then replied, "Kaam to Maine Karna Hain", "Tumara Kaam Ho Jayega". Thereafter, myself, complainant Rajesh Kumar and Amar Singh came out of the building along with accused Om Prakash in the open area at the back of the seat of accused Manohar Lal near the window. There accused Om Prakash asked, "Paise Do Jaldi Karo". On this complainant Rajesh Kumar took out Rs.5000/- from the pocket of his shirt and passed on to accused Om Prakash, who accepted the same with his hand. I do not remember with which hand Om Prakash accepted the money. (Vol.) After accepting the money accused Om Prakash kept it in the pocket of his pant. I cannot admit or deny if accused Om Prakash accepted said money with his right hand and after counting it with both his hands he kept it in left side pocket of his pant. (Witness is confronted with portion B to B of Ex.PW8/A where it is so recorded. Witness states that he did not give such statement to CBI). He further

states that accused Om Prakash did not count the money. It is correct that while handing over money to accused Om Prakash, Om Prakash asked "Pure To Hain". And on this complainant Rajesh Kumar said, "Gin Lo". It is correct that transaction of passing of money took place at the scooter stand. It is correct that Amar Singh PW gave signal to the trap party and on this members of trap team came at the spot. It is also correct that accused Om Prakash was apprehended by CBI officials and he was taken from there to the room of Shri Shiv Lal, Administrative Officer, MCD."

14. It was also put to PW8 that there was exchange of heated words between complainant and MCD officials and that on the intervention of the appellant, the complainant in the heat of moment dragged him and thrust the tainted money of ₹5,000/- in the left pocket of his pant. He denied all of it to be correct. Likewise, he also denied that co-accused did not demand any money from the complainant, nor he asked the complainant to come out or pay the same to the appellant. It was also put to him that CBI officials broke open the lock of the Almirah of co-accused Manohar Lal and seized 16 files, which he denied to be correct.

15. From the testimonies of material witnesses namely PW2, PW4, PW5 and PW8, as analyzed above, it would be seen that the appellant was not only present in the office of MCD at the relevant time, but was taking cold drink in the company of co-accused Manohar Lal. The conversation that took place between complainant and co-accused Manohar Lal was within the presence and hearing of appellant. The said conversation was regarding demand of money for the work to be done by the co-accused Manohar Lal. On the pointing out of co-accused towards the appellant, as stated by all the witnesses in the manner as noted above, the complainant and appellant came out of the office at the scooter stand. There, on specific demand, the appellant received money from the complainant, counted the same and kept it in his pocket. In fact, it is admitted by the appellant that he was present there and the money was received by him. The plea that was taken by him was that the money was forcibly thrust in his pocket by the complainant as he had a grudge against him on account of delay in the issuance

of license to his father and also on account of his having intervened in the quarrel that was taking place between CBI and MCD officials. It is extremely unbelievable that PW2 would thrust money into the pocket of the Appellant merely because he intervened in the quarrel that was between CBI and MCD officials or complainant and MCD officials. It is true that PW2 might be aggrieved against co-accused Manohar Lal for pendency of the application of his father for quite long time and it was in that context that he met him. The factum of meeting of PW2 with co-accused Manohar Lal on 6th April, 1994 is fully corroborated by independent witness PW8 who also accompanied him to the office of co-accused Manohar Lal. Since the co-accused Manohar Lal made a demand of `10,000/-, PW2 lodged a complaint with CBI which ultimately laid a trap. It was entirely unbelievable that the Appellant would be falsely implicated just because of his having intervened in the quarrel. In the given circumstances, the plea that PW2 had forced the tainted money into his pocket cannot appeal to any reason.

16. The Appellant in his statement under Section 313 Cr.P.C claimed that he had gone to the office of MCD on 7th April, 1995 to deposit the license fee relating to his license application and that in the said office he saw two-three CBI Officials fighting with security guards of MCD. From the testimony of DW2 it does appear that one Om Prakash Khurana had applied for issuance of license for running a household industry on 12th December 1994. Though it is not clear if Om Prakash Khurana was the appellant, but assuming that he was the appellant who had applied for issuance of license as deposed by DW2, but it is also stated by him that the issuance of license to Om Prakash Khurana was sanctioned on 5th April, 1995 and that the receipt in this regard was issued on 3rd May, 1995. There is nothing on record to suggest as to the purpose of visit of appellant in the office of MCD, more so to the seat of co-accused Manohar Lal on 7th April 1995. There is no evidence of any official of the said department that the Appellant had been officially called or had come for the official purpose to the office on 7th April, 1995 in connection with his license application. On the other hand, all the witnesses namely PW2, PW5 and PW8 and also PW7 have deposed about the presence of the Appellant in the office of co-accused Manohar Lal at the time of their visit on 7th April, 1995. They stated about not only the presence of the Appellant in the office of co-accused Manohar Lal, but also his having cold drinks with him at the

time of their visit. In the absence of any plausible explanation, it was rightly recorded by the learned Special Judge that the presence of the Appellant in the said office in the company of co-accused Manohar Lal, particularly when the entry of general public at that place was restricted, would rather show him friendly with co-accused Manohar Lal.

17. As noted above, all the above witnesses have maintained about the recovery of files from the dicky of scooter of the appellant and also that one of those files pertained to issue of license in the name of father of the complainant. They have also maintained about the seizure of scooter of the appellant at the spot on the same day. The appellant examined his brother DW3 Chander Prakash in order to prove that the scooter was seized from the residence of the appellant in the night of 7th April, 1995. The testimony of this witness is not reliable. At one place, he stated that he had given the said scooter for repair on 7th April, 1995 and collected the same sometime at 5 pm and thereafter he went to the residence of his brother/ appellant and remained there till midnight. He stated that it was at about 11 pm that some persons from CBI came along with the appellant and took away the scooter along with them. He stated that there was no document pertaining to the MCD office in the said scooter at that time. However, in his cross-examination, he admitted that he did not know as to when the scooter was given for service/ repair. In an answer to a question he stated that he met the appellant and his wife three days prior to 7th April, 1995 when his brother asked him to take delivery of his scooter from the workshop. This was entirely inconsistent to what he stated in his examination-in-chief. It was put to him that he did not take any delivery of the scooter from the workshop on 7th April, 1995 or that the scooter was not seized from the residence.

18. It is undisputed fact that after apprehension, the appellant was brought before PW3, who was an Administrative Officer in the Department at the relevant time. It was also put to PW3 that CBI officials seized 17 files by breaking open the lock of almirah of co-accused Manohar Lal to which he expressed ignorance. It is not believable that CBI officials will break open the lock of the Almirah and no official of MCD would come to know about the same. From the testimony of PW4, 5 and 8, it stands established that the files were recovered from the dicky of scooter of

the appellant.

19. It may be that there was no direct evidence on record to prove any prior consultation or discussion between the appellant and the co-accused Manohar Lal regarding the demand and acceptance of bribe money from the complainant, but from the facts and circumstances coupled with the conduct and behaviour of appellant, it stands established that it was in the knowledge of appellant that the co-accused Manohar Lal had demanded money from the complainant for doing official work. Not only that, he actively aided and facilitated in commission of the offence by coming out of the office at the instance of co-accused and accepted the bribe money from the complainant. The Appellant has not come out with any believable explanation as to why he was present in the licensing office at the relevant time and sitting with co-accused Manohar Lal or as to why he had come out of the office at the saying of co-accused Manohar Lal and took money from PW2 and accepted the same and after counting, kept it in the pocket of his pant. He has also no explanation as to how the file pertaining to the license of the father of PW2 was found in the dicky of his scooter. It thus stands established that the appellant had not only conspired with co-accused Manohar Lal in the commission of offence, but had aided co-accused Manohar Lal in the commission of offence of accepting the bribe money. The authority titled as Virender Nath v State of Maharashtra AIR 1996 SC 490 which was relied upon by learned defence counsel is distinguishable from the facts of the present case. In the said case while maintaining the conviction of A1 at whose instance, the bribe money was accepted by A2, the Supreme Court, in the facts and circumstances, observed as under: -

"5. Insofar as A2 is concerned, we find considerable merit in the contention raised on his behalf that he could have received the money innocently from the complainant at the asking of A1, without realizing that it was bribe money. The argument prevails because the prosecution has nowhere led any other evidence of conduct or consistency of a behavior from which it could be spelled out that A2 was a habitual go-between in facilitating acceptance of bribe by A1. This single instance which has been

brought forth does not reveal of any regularity of conduct of this nature. There thus exists an area of doubt, the benefit of which shall go to A2.

20. From the above analysis of evidence as done by me, I find no infirmity or illegality in the impugned judgment of learned Special Judge qua appellant and in view of my above discussion, the appellant is found to have conspired and abetted in commission of offence under Section 7 and Section 13(1)(d) of the Act. However, since the appellant is not a public servant, the provisions of section 13(1)(d) of the Act would not be applicable. The appellant is, therefore, convicted under Section 12 of the Act read with Section 120B IPC and Section 7 of the Act only. Keeping in view the role of the appellant in the entire episode and also the fact that the co-accused Manohar Lal has been convicted and since deceased, I think the ends of justice would be met by sentencing the appellant to rigorous imprisonment for a term of six months and a fine of `1000/- and in default of payment of which he shall undergo additional RI for one month. Accordingly, the order of conviction and sentence passed by learned Special Judge are modified to the extent indicated above. The period, if any, undergone shall be set off.

21. The appeal stands disposed of.

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