IN THE HIGH COURT OF JUDICATURE AT PATNA
GOVT. APPEAL (SJ) No.18 of 2019

Arising Out of PS. Case No.-31 Year-2014 Thana- ECONOMIC OFFENCES, BIHAR District- Patna

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THE ECONOMIC OFFENCES UNIT THROUGH THE SUPERINTENDENT OF POLICE, EOU, PATNA, BIHAR Bihar

... ... Appellant/s

Versus

ARUNA KUMARI, Wife of Aditya Narayan Resident of Village- Bara, P.S.- Guraru, District- Gaya.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Vishwanath Pd. Singh, Sr. Advocate
		Ms.Soni Shrivastava, Advocate
For the Respondent/s	:	Mr.Y.V. Giri, Sr. Advocate
		Mr.Pranav Kumar, Advocate
		Ms.Shrishti Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 19-02-2025

Before recording the decision of this Court in respect of the instant appeal on merits, this Court is under obligation to decide the I. A. No. 1 of 2019, which is an application under Section 5 of the Limitation Act for condonation of delay.

2. It will not be out of place to mention here that the instant appeal was filed along with I. A. No. 1 of 2019. A Co-ordinate Bench of this Court vide order, dated 23rd of January, 2020, while refusing the prayer for condonation of delay, dismissed both the I. A. No. 1 of 2019 as well as Government Appeal (SJ) 18 of 2019.

3. Against the said order, dated 23rd of January, 2020,

the appellant moved before the Supreme Court in Special Leave to Appeal (Crl.) Nos. 5068-5069 of 2020.

4. The Hon'ble Supreme Court passed the following order on 19th of July, 2024:--

> *"Leave granted.*
>
> *Having heard learned counsel for the parties, we are of the opinion that the High Court should have condoned the delay. The matter required in-depth consideration. Accordingly, we set aside the impugned judgment and direct the High Court to examine whether or not to grant leave to appeal to the State against the impugned judgment dated 25.02.2019. Govt. Appeal (SJ) No. 18/2019 shall accordingly stand revived on the file of the High Court.*
>
> *We have deliberately refrained from commenting any further, as the matter will have to be heard by the High Court. All pleas and contentions are left open.*
>
> *Parties shall appear before the High Court on 28.08.2024, when the next date of hearing will be fixed.*
>
> *The appeals are allowed and disposed of in the above terms.*
>
> *Pending application(s), if any, shall stand disposed of."*

6. On perusal of the above quoted order, it appears that the Hon'ble Supreme Court was of the opinion that the High Court should have condoned the delay and the matter required in-depth consideration. The above observation of the

Hon'ble Supreme Court, in my considered view, is in effect that the delay in filing the appeal by 98 days ought to have condoned and the appeal should have heard on merit by way of in-depth consideration. Such observation of the Hon'ble Supreme Court is in the nature of direction to allow the application under Section 5 of the Limitation Act.

7. This Court in Paragraph No. 14 of the impugned order dated 23rd of January, 2020 held as hereunder:-

> *"14. From the pleadings in the Interlocutory Application, the Court finds that learned counsel for the Department had sent the memo of appeal along with the limitation petition on 06.05.2019 itself to the Department. Thus, it is clear that even on 06.05.2019, when the matter was found fit for filing of appeal and the prepared memo of appeal as also the limitation petition was sent to the Department on 06.05.2019 and still the same being ultimately filed on 07.08.2019, in the considered opinion of the Court, cannot be casually condoned. There is absolutely no explanation for such delay."*

8. In a very recent decision in the case of ***Mool Chandra v. Union of India & Anr.***, reported in ***(2025) 1 SCC 625***, the Hon'ble Supreme Court referred to an earlier decision in ***Commr., Nagar Parishad, Bhilwara v. Labour Court & Anr.***, reported in ***(2009) 3 SCC 525*** and held that while deciding an application for condonation of delay, it is well settled that the

High Court ought not to have gone into the merits of the case and would have only seen whether sufficient cause had been shown by the appellant for condoning the delay in filing the appeal before it. We ourselves have also examined the application filed under Section 5 of the Limitation Act before the High Court and, in our opinion, the delay of 178 days has been properly explained by the appellant. That being the position, we set aside the impugned order of the High Court. Consequently, the appeal filed before the High Court is restored to its original file. The High Court is requested to decide the appeal on merit in accordance with law after giving hearing to the parties and after passing a reasoned order.

9. The lower court record of the instant appeal shows that the impugned judgment of acquittal was passed on 25th of February, 2019. The application for obtaining certified copy was made on 16th of March, 2019. The certified copy was provided to the appellant on 4th of April, 2019. The Memorandum of Appeal along with the limitation petition was sent to the department on 6th of May, 2019 and after getting the approval of the department, the Memorandum of Appeal as well as the application under Section 5 of the Limitation Act was filed on 7th of August, 2019. It is true that there was delay of almost 3

months in filing the appeal, there are series of cases, specially where the Government Department is under obligation to take any legal step, the official red-tapism causes delay in taking such step within the period of limitation. In such cases of official lethargy or lackadaisical approach, unless a particular person in charge of dealing with the file, can be pin pointed by the Court, the Official Department, In-charge of investigation and prosecution of a special case, cannot be held responsible for causing delay. The Court is required to take liberal, justice orientated approach in this respect for re-appreciation of an appeal filed by the Government through the various departments against the order of acquittal.

10. In view of such circumstances, this Court finds that in the instant appeal, delay is required to be condoned.

11. Accordingly, delay in filing the appeal by 98 days is condoned.

12. Leave to prefer an appeal by the Government is allowed under the facts and circumstances of the case and the appeal was taken for hearing on merit.

13. This is an appeal under Section 378 (1) read with Section 378 (3) of the Code of Criminal Procedure, 1973 against the order of acquittal passed by the learned Special Judge,

Vigilance, Patna in Special Case No. 52 of 2014, arising out of Economic Offences Unit Case No. 31 of 2014, acquitting the respondent of the charges under Section 7/13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

14. One Padmavati Kumari filed a written complaint before the concerned authority at Economic Offences Unit on 15th of July, 2014, alleging, inter alia, that she used to work as Anganwari Sevika of Hamidnagar Panchayat within the jurisdiction of Goh Block, in the district of Aurangabad. On 7th of July, 2014, the CDPO, Goh inspected the centre, managed by the informant. On the next date, the personal driver of the CDPO, namely, Rupesh, called the informant from his mobile phone and informed her that Aruna Kumari, the CDPO had demanded Rs. 10,000/- as bribe on the ground that the informant was not able to run her centre properly and if the bribe money be not paid, she would be terminated for being failed to manage the affairs of the centre properly.

15. On receipt of such complaint, the Officers in Economic Offence Unit entrusted one Rajesh Narayan Verma, Inspector to verify the truthfulness of the complaint. On verification, the concerned officer submitted his report on 17th of July, 2014, communicating that the complaint was *prima facie*

genuine and the informant would deliver the bribe money to the respondent on 18th of July, 2014 at 01.00 p.m. The Officers in Economic Offence Unit constituted a trap team and prepared pre-trap memorandum. The informant was asked to give a sum of Rs. 10,000/-, which would be tendered to the respondent. The money was mixed with Phenolphthalein powder. At about 01.15 p.m., the informant went to the chamber of the accused and handed over the said currency notes consisting of Rs. 10,000/- to the accused. The accused accepted the said money and put the same inside a black purse. Immediately, the trap team entered into the house and caught hold of the accused and recovered the money from her purse. Her hands and the purse were soaked in a solution of Sodium Carbonate, which turned pink. Thereafter, the money, the purse and the solution of sodium Carbonate were seized, following the rules and procedure of seizure and post-trap memorandum was prepared. Subsequently, the accused was arrested and taken into custody. The Economic Offence Unit took up the case for investigation and on completion of investigation, submitted charge-sheet against the accused / respondent under Section 7/13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The case was transferred to the Court of the learned Special Judge, Vigilance,

Patna for trial. The learned Special Judge took cognizance of the offence; charge was framed against the accused under the above-mentioned penal provisions; and trial of the case commenced. During trial, the prosecution examined 12 witnesses. Pre-trap memorandum, post-trap memorandum, forensic evidence and other documents were marked exhibits which I propose to discuss in detail while discussing the evidence adduced by the prosecution.

16. The learned Trial Judge on careful consideration of the evidence on record and submissions made by the learned counsels on behalf of the prosecution and defence held that prosecution failed to bring home the charge against the accused and he recorded an order of acquittal.

17. Hence, the instant appeal.

18. Mr. Vishwanath Prasad Singh, learned Sr. Advocate, ably assisted by Ms. Soni Srivastava, learned Advocate, submits at the outset that what weighed for the Trial court to hold in support of the accused is that the informant turned hostile in course of her evidence and said that she only gave Rs. 7,000/- instead of Rs. 10,000/- and that she was not personally approached by the accused demanding or accepting bribe directly. The learned Trial Court also held that there was

not pending work of the informant before the accused and therefore there was no motive for demanding bribe from her. It is also recorded by the Trial Court that there were material discrepancies in the pre-trap and post-trap memorandum. The prosecution failed to produce seized bribe money on the plea that it was destroyed by rats and rodents in Police Malkhana. Even the black purse of the accused was not produced for identification. Lastly, no independent witness confirmed the demand, acceptance and recovery of the bribe money.

19. The learned Sr. Advocate on behalf of the appellant submits that the complainant was declared hostile by the prosecution when she stated that she only gave Rs. 7,000/- to the officer of Economic Offence Unit to be used to deliver as bribe money and not a sum of Rs. 10,000/-.

20. In this regard, it is contended by the learned Sr. Advocate on behalf of the appellant that observation of the Trial Court that the evidence of the informant cannot be relied upon on the ground that she was declared hostile, is misconceived for the reason that if the same is accepted, there cannot be any case where appeal against acquittal can be allowed and the error committed by the Trial court can be corrected.

21. In order to substantiate his contention, the learned

Sr. Advocate on behalf of the appellant takes me to the evidence adduced by the witnesses on behalf of the prosecution. It is submitted by him that in order to apprehend a person who is alleged to have accepted bribe, the established process of investigation is that the Economic Offence Unit prepares pre-trap memo. On the basis of pre-trap memo, the informant is sent to the accused to deliver bribe and immediately after such money is paid to the accused, the accused is caught red-handed by the trap team.

22. The prosecution by adducing adequate evidence has proved the pre-trap and post-trap memo, recovery of bribe money from the purse of the accused and the forensic report, which proves that the accused accepted money by her hand and had kept the same inside a black coloured purse.

23. In this regard, learned Sr. Advocate appearing on behalf of the appellant relies on paragraph 18 of judgment, delivered in the case of ***Nayankumar Shivappa Waghmare v. State of Maharashtra,*** reported in ***(2015) 11 SCC 213***, wherein it is observed by the Hon'ble Supreme Court that the Trial Court while appreciating the prosecution evidence completely ignored the presumption required to be taken under sub-section 1 of Section 20 of the Prevention of Corruption Act, 1988. Sub-

section 1 of Section 20 provides that where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13, it is proved that an accused person has accepted or obtained or has agreed to accept or attempted 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 obtained 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 Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

24. The learned Trial Court failed to take the presumption of Section 20 of the said Act only on the ground that the informant told that she gave Rs. 7,000/- to the officers constituting trap and not a sum of Rs. 10,000/-.

25. The learned Sr. Advocate on behalf of the appellant next submits that the learned Trial Judge erred in relying on the evidence of the complainant where she stated that the accused never demanded any gratification from the complainant. This statement made by the complainant on oath ought to have been treated as a minor discrepancy taking

together the evidence of P.W. 3/ Rajesh Narayan Verma, who went to the office of the accused to verify the allegation made by the informant in her complaint. It is stated by the P.W.3 that on 17th of July, 2014, he along with the informant went to the office of CDPO, Goh-1 Block at about 01.30 p.m. It was informed from her office that the CDPO left her office for her residence situated at Daudnagar. They reached Daudnagar in the house of the accused at about 03.00 p.m. The informant introduced P.W. 3 as her brother in law. In presence of P.W. 3, the accused demanded illegal gratification of Rs. 10,000/ from the complainant. The Trial Court did not consider the said evidence of P.W. 3 while recording the order of acquittal in favour of the accused.

26. Referring to the decision of ***Vinod Kumar v. State of Punjab***, reported in ***(2015) 3 SCC 220***, It is submitted by the learned Sr. Advocate for the appellant that the learned Trial Judge did not assign any reason as to why he failed to consider the evidence of the trap team. In fact, nothing has been put to the trap witnesses during cross-examination to elicit that they were anyway personally interested to get the appellant convicted.

27. In Vinod Kumar (supra), it was urged that once

the informant has resiled totally from his earlier statement, no conviction can be recorded on the basis of the trap witness.

28. In ***Hazari Lal v. State (Delhi Administration)***, reported in ***(1980) 2 SCC 390***, a Police Constable was convicted under Section 5(2) of the Prevention of Corruption Act, 1947 on the allegation that he demanded and received Rs. 60/- from the informant who was examined as P.W. 3 and had resiled from his previous statement and was declared hostile by the prosecution. The official witnesses had supported the prosecution version. Keeping in mind the evidence of the official witnesses, the Trial Court had convicted the appellant therein, which was affirmed by the High Court. A contention was raised that in the absence of any direct evidence to show that Police Constable demanded or accepted bribery, no presumption under Section 4 of the 1947 Act can be drawn merely on the strength of recovery of the marked currency notes from the said Constable. The Hon'ble Supreme Court observed as follows:-

> *"10. ……. It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that he money was obtained by the accused from P.W.3. Under Section 114 of the Evidence Act the Court may presume the existence of any fact which it*

> *thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to Section 114 of the Evidence Act is that the court may presume that a persons who is in possession of the stolen goods, soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the Court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from P.W. 3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from P.W. 3, the presumption under Section 4(1) of the Prevention of Corruption Act is immediately attracted."*

29. The learned Sr. Advocate for the appellant further submits that the Hon'ble Supreme Court in ***Rama Devi v. The State of Bihar & Ors.***, reported in ***2024 (4) PLJR 240***, placing reliance on the earlier judgment held that the principle "*falsus in uno, falsus in omnibus*" is not applicable in the adjudication process of criminal case in the matter of appreciation of evidence adduced by the witnesses. The above principle does not occupy the status of rule of law. It is merely a rule of caution which involves the questions of the weight of evidence that a Court may apply in the given set of

circumstances. In cases where a witness is found to have given unreliable evidence, it is the duty of the Court to carefully scrutinize the rest of the evidence, sifting the grain from the chaff. The reliable evidence can be relied upon especially when the substratum of the prosecution case remains intact. The Court must be diligent in separating truth from falsehood. Only in exceptional circumstances, when truth and falsehood are so inextricably connected as to make it indistinguishable, should the entire body of evidence be discarded.

30. In the instant case, the *de facto* complainant deposed as P.W. 5. In her evidence, she stated that on 7th of July, 2014, she was taking training of vaccination at Goh Health Centre. On that date, the CDPO visited the Anganwari Centre, run by the *de facto* complainant. In the evening, she received a phone call of the Driver of the CDPO. He told the informant that the CDPO had called her on the next date. She went to the office of the CDPO and met her. The CDPO told her that she could not run her Anganwari Centre in proper manner and she might cancel her Centre. When the informant requested the CDPO not to take such extreme step as she was taking training on 7th of July, 2014 at Block Health Centre, the CDPO told to meet her Driver. Her Driver demanded a sum of Rs. 10,000/-.

Thereafter, she lodged a complaint before the Economic Offence Unit. The said complaint was marked as Exhibit-4. Then one Rajesh Kumar took her to CDPO office for verification of the statement made by her in the complaint. When they met the CDPO, she again demanded a sum of Rs. 10,000/-. Thereafter, it is stated by her that she was asked to bring a sum of Rs. 10,000/- to the office of Economic Offence Unit. She brought a sum of Rs. 7,000/- and handed over the said sum to the officer at Economic Offence Unit. She again went to the office of Economic Offence Unit on 17th of July, 2014 and on the next date also her signature was taken on some papers and she was taken to the office of the CDPO. She entered into the office of the CDPO with Rajesh Kumar and met her. The CDPO asked her to give money and she paid the money to her and came out of the room. Then, immediately the officers of Economic Offence Unit apprehended the CDPO.

31. Referring to the evidence of P.W. 5, it is submitted by the learned Sr. Advocate appearing on behalf of the appellant that the *de facto* complainant in course of her evidence as P.W. 5 corroborated the case of the prosecution on all material points. Incident took place in the year 2014. The informant deposed after two years of the occurrence. It is

immaterial whether *de facto* complainant paid a sum of Rs. 7,000/- or Rs. 10,000/- to the accused. What is material is as to whether prosecution has been able to prove that the CDPO demanded illegal gratification from the informant and the said gratification was paid by the informant and the accused was immediately apprehended with bribe money by the officers of the Economic Offence Unit constituting trap.

32. The learned Sr. Advocate appearing on behalf of the appellant further submits that the evidence of the trap witnesses as well as the evidence of the verifier is entirely trustworthy and they corroborated the prosecution case to the satisfaction of the Court. The fact that the trap witnesses are Police Officers is not sufficient to insist on corroboration by any independent witness or to throw them away without consideration. There is no rule of prudence, which has crystallized into a rule of law, nor indeed any rule of prudence which requires that evidence of such officers should be treated on the same footing as the evidence of accomplicers and there should be insistence on corroborations. In the facts and circumstances of a particular case, a Court may be disinclined to act upon the evidence of such an officer without corroboration, but equally in the facts and circumstances of another case, the

Court may unhesitatingly accept the evidence of such an officer. It is all a matter of appreciation of evidence and on such matters, there can be no hard and fast rule, nor can there be any procedural guidance. In support of his argument, the learned Sr. Advocate for the appellant refers to the decision of Hazari Lal (supra).

33. Mr. Y. V. Giri, learned Senior Counsel on behalf of the respondent, on the other hand, argues that the prosecution failed to establish any motive behind the allegation of demand of illegal gratification from the informant. No evidence was on record to prove that there was some pending work of the informant before the accused and the accused had administrative control over the informant. Prosecution also failed to produce any evidence that the accused in his position as CDPO had the authority to terminate the job of the petitioner as Aganwari Sevika or that she could terminate the centre of which the informant was in-charge. Therefore, the fulcrum of the prosecution case that the accused demanded bribe with the threat of cancellation of informant's centre has not been proved during trial of the case.

34. Secondly, it is urged by the learned Senior Counsel on behalf of the respondent that the complainant in her

evidence as P.W. 5 turned hostile and admitted that she only gave Rs. 7,000/- instead of Rs. 10,000/- and that she never saw the accused demanding or accepting money directly. It was the prosecution case that the driver of the respondent demanded a sum of Rs. 10,000/- from the informant in the name of the respondent. The investigating agency did not take any attempt to examine the said driver of the respondent in course of investigation. No attempt was taken to record his statement under Section 164 of the Cr.P.C. Therefore, the very ingredient of offence relating to demand of illegal gratification was not proved during trial.

35. Thirdly, the learned Senior Counsel on behalf of the respondent has pointed out showing the evidence adduced by the witnesses that the black purse which allegedly contained the bribe money, was not produced in Court. It is the case of the prosecution that the seized currency notes were kept in a paper packet in police Malkhana. However, during trial, the seized money could not be produced by the prosecution on the ground that the envelop, containing money, was destroyed by rats and rodents.

36. It is also contended on behalf of the respondent that no independent witness confirmed demand, acceptance and

recovery of the bribe money from the possession of the respondent.

37. The learned Senior Counsel on behalf of the respondent also submits that the prosecution failed to produce any independent witness of apprehension of the accused while accepting illegal gratification. Prosecution, however, relied heavily on the evidence of P.W. 3 who is a Police Officer attached to EOU and accompanied the informant to verify her statement made in the complaint. In his evidence, he stated that he did not hear the accused demanding money. He also did not see her accepting illegal gratification. He was standing near the door of the room of the respondent's office and as soon as the informant came out of the room, he gave signal to the trap team and they apprehend the accused.

38. Learned Senior Counsel on behalf of the respondent submits that P.W. 1, P.W. 2, P.W. 6, P.W. 8 and P.W. 9 are the members of trap team who apprehended the accused. On careful scrutiny of their evidence, one finds that none of them directly witness the accused demanding or accepting the bribe. They only saw some money being recovered from a black purse which was not produced in Court.

39. The learned Senior Advocate on behalf of the

respondent further submits that the forensic report, proved by P.W. 10 (Exhibit 8) confirmed presence of Phenolphthalein powder on the accused hands and purse. However, the FSL did not include scientific data supporting the said findings.

40. It is also submitted by the learned Senior Counsel on behalf of the respondent relying on the decision in the ***P.S. Rajya v. State of Bihar,*** reported in ***(1996) 9 SCC 1*** that when the criminal charge and the charge in disciplinary proceeding which was initiated against the respondents were based on same allegation and same set of evidence and the department proceeding ended in favour of the respondent, criminal charge on the same set of evidence cannot stand.

41. On the same issue, the learned Senior Advocate for the respondent refers to another decision of the Apex Court in the case of ***Ashoo Surendranath Tewari v. CBI & Anr.***, reported in ***(2020) 9 SCC 636***. Paragraph Nos. 8 to 13 of the said judgment are relevant and are quoted below:-

> ***"8.*** *A number of judgments have held that the standard of proof in a departmental proceeding, being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceeding where the case has to be proved beyond reasonable doubt. In P.S. Rajya v. State of Bihar [P.S. Rajya v. State of Bihar, (1996) 9 SCC 1 : 1996 SCC (Cri)*

897] , the question before the Court was posed as follows: (SCC pp. 2-3, para 3)

"3. The short question that arises for our consideration in this appeal is whether the respondent is justified in pursuing the prosecution against the appellant under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission."

9. *This Court then went on to state: (P.S. Rajya case [P.S. Rajya v. State of Bihar, (1996) 9 SCC 1 : 1996 SCC (Cri) 897] , SCC p. 5, para 17)*

"17. At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it."

10. *This being the case, the Court then held: (P.S. Rajya case [P.S. Rajya v. State of Bihar, (1996) 9 SCC 1 : 1996 SCC (Cri) 897] , SCC p. 9, para 23)*

"23. Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a

view [Prabhu Saran Rajya v. State of Bihar, Criminal Miscellaneous No. 5212 of 1992, order dated 3-8-1993 (Pat)] that the issues raised had to be gone into in the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs."

11. *In Radheshyam Kejriwal v. State of W.B. [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , this Court held as follows: (SCC pp. 594-96, paras 26, 29 & 31)*

"26. We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case. In B.N. Kashyap [B.N. Kashyap v. Crown, 1944 SCC OnLine Lah 46 : AIR 1945 Lah 23] the Full Bench had not considered the effect of a finding of fact in a civil case over the criminal cases and that will be evident from the following passage of the said

judgment: (SCC OnLine Lah: AIR p. 27)

'... I must, however, say that in answering the question, I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or actions would be relevant in criminal cases, it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of Section 41 of the Evidence Act, will have to be carefully examined.'

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29. We do not have the slightest hesitation in accepting the broad submission of Mr Malhotra that the finding in an adjudication proceeding is not binding in the proceeding for criminal prosecution. A person held liable to pay penalty in adjudication proceedings cannot necessarily be held guilty in a criminal trial. Adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case the entire burden to prove beyond all reasonable doubt lies on the prosecution.

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31. It is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the accused is exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case."

12. *After referring to various judgments, this Court then culled out the ratio of*

those decisions in para 38 as follows: (Radheshyam Kejriwal case [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , SCC p. 598)

"38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and

circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases."

13. *It finally concluded: (Radheshyam Kejriwal case [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , SCC p. 598, para 39)*

"39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court."

42. It is also submitted by the learned Senior Counsel on behalf of the respondent placing reliance on ***Phula Singh v. State of Himachal Pradesh***, reported in ***(2014) 4 SCC 9*** that only in exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for

interference.

43. In the instant case, according to the learned Senior Counsel for the respondent, there is no ground for interference because the prosecution hopelessly failed to bring home the charge against the respondent.

44. In ***Raja & Ors. v. State of Karnataka***, reported in ***(2016) 10 SCC 506***, the Hon'ble Supreme Court had occasion to deal with the scope of interference with a judgment of acquittal in view of the ratio laid down in ***Sunil Kumar Sambhudayal Gupta (Dr.) & Ors. v. State of Maharashtra, (2010) 13 SCC 657*** that if two views are possible, the Appellate Court could not ordinarily interfere therewith though its view may appear to be the more probable one. The appellate court is under an obligation to consider and identify the error in the decision of the trial court and then to decide whether the error is gross enough to warrant interference. The Appellate Court is not expected to merely substitute its opinion for that of the trial court and that it has to exercise its discretion very cautiously to correct an error of law or fact, if any, and significant enough to warrant reversal of the verdict of the Trial Court.

45. According to the learned Senior Counsel for the respondent, in the instant case, prosecution hopelessly failed to

prove that the accused demanded illegal gratification.

46. Referring to a decision of the Hon'ble Supreme Court in ***State of Punjab v. Madan Mohan Lal Verma***, reported in ***2013 (14) SCC 153,*** It is submitted by the learned Senior Advocate for the respondent that in order to prove a charge under the Prevention Of Corruption Act, 1988, satisfactory evidence with regard to demand of illegal gratification is sine qua non. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act of 1988 by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability that the money was accepted by him/her, other than as a motive or reward as referred to in Section 7 of the Act 1988. While invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on

the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution.

47. Section 7 of the Prevention of Corruption Act, 1988 deals with the offences relating to public servant being bribed. Section 7 runs thus:-

> *"7. Offence relating to public servant being bribed – Any public servant who, -*
>
> *(a) Obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or*
>
> *(b) Obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or*
>
> *(c) Performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which*

may extend to seven years and shall also be liable to fine."

48. It is held by the Hon'ble Supreme Court in ***Krishan Chander v. State of Delhi***, reported in ***2016 (3) SCC 108*** that demand of illegal gratification is a *sine qua non* for constitution of an offence under the Prevention of Corruption Act. Mere production of tainted money recovered from the accused along with positive result of phenolphthalein test, sans the proof of demand of bribe, is not enough to establish the guilt of a charge under Section 7 of the Act, made against the accused.

49. In the instant case, it is found from the written complaint as well as evidence of P.W. 5, *de facto* complainant, that on 7th of July, 2014, when the informant went to attend a training programme in Block Health Centre on vaccination, the accused, who is a CDPO found that the informant was not capable of running Anganwari Centre properly and she would terminate the centre. When the informant prayed for her mercy, the CDPO told her to talk to her driver. Then her driver demanded a sum of Rs. 10,000/-. Thus, there was no direct demand of illegal gratification by the accused.

50. At this juncture, a question arises as to whether as per the requirement of Section 7, demand of illegal

gratification was required to be made by the accused herself or the accused may employ another person to demand the said money. In the instant case, it is contended on behalf of the appellant that the alleged demand by the driver of the accused ought to have been considered as the demand made by the accused herself.

51. In this regard, the appellant relied heavily on the evidence of P.W. 3, who was posted as an Inspector in Economic Office Unit on 17th of July, 2014. It is found from his evidence that on 16th of July, 2014, under the instruction of the Superintendent of Police, Economic Offence Unit, he went to the office of CDPO along with the informant and reached there at about 01.30 p.m. He found the CDPO absent in the office. Then, they went to her residence. They met the accused in her house. The informant requested her not to make any adverse comment in the inspection book against her centre. At that time, the accused demanded a sum of Rs. 10,000/- as illegal gratification. The informant agreed to pay Rs. 2,000/- but the accused did not agree. Then, the informant agreed to meet the demand of the accused and told her that she would come on 18th of July, 2014 at about 01.00 p.m. Subsequent incident of preparation of pre-trap memo, apprehension of the accused

laying trap with bribe money, arrest of the accused etc. are on record being part of the evidence adduced by the witnesses.

52. At this stage, a question naturally arises as to whether initial demand of Rs. 10,000/- by the driver of the accused belies the prosecution case of demand of illegal gratification by the accused. In this regard, this Court finds that P.W. 3 was cross-examined at length by learned defense counsel. He is a Police Officer having no interest in the outcome of the case. It is not even suggested that P.W. 3 was inimical against the accused. There is no reason for P.W. 3 that he would adduce false evidence. From his evidence, it is clear that the accused demanded a sum of Rs. 10,000/- from the informant. Thus, demand of illegal gratification by the accused for dishonest performance of public duty, i.e., to give a false report in the inspection book of Anganwari Centre, is proved beyond any shadow of doubt on the basis of evidence of P.W. 3 and P.W. 5.

53. P.W. 5 lodged the complaint before the Economic Offence Unit only after she was illegally demanded to pay bribe of a sum of Rs. 10,000/-. It is true that the prosecution failed to produce the currency notes that were seized from the possession of the accused on the ground that the envelop containing seized money was destroyed by rats and

rodents. But during trial, P. S. Malkhana register was produced and proved as exhibit. In Malkhana register, receipt of an envelop containing bribe money in connection with the instant case was duly recorded. Thus, there is no doubt that seized money was produced in Malkhana register but as a result of improper condition of Malkhana and lack of up to date preservation system, the envelop along with currency notes were destroyed by rodents. For destruction of the seized money, which was recovered from the possession of the accused, the prosecution case cannot be held to be not proved. In many cases, seized articles may not be produced during trial for one reason or the other. Even the subject matter of offence, sometimes cannot be recovered by the investigating agency in many cases, *corpus delicto*, is destroyed by the offenders. Even under such circumstances an accused can be convicted if other surrounding circumstances point at the guilt of the accused without any reasonable doubt.

54. In the instant case, the accused was apprehended immediately after she received illegal gratification. The bribe money was recovered from the purse of the accused. Post trap memo has been marked exhibit. From the post trap memo, it is found that when the hands of the accused were

washed, the water turned pink as a result of Phenolphthalein powder mixed in the hands of the accused when she received the money and had kept it inside the purse. The purse was also washed and the water turned pink. The said water was seized and forensic report confirms presence of Sodium Carbonate and Phenolphthalein powder in the water.

55. The learned Sr. Advocate for the respondent has urged with great stress that the prosecution failed to prove that the accused was given bribe of Rs. 10,000/-, when the *de facto* complainant herself told that she gave seven numbers of currency notes of Rs. 1,000/- denomination. Thus, the Economic Offence Unit had Rs. 7,000/- in their hand and therefore the story of demand of Rs. 10,000/- does not arise at all.

56. In the instant case, it is for the prosecution to prove that the accused demanded illegal gratification and she accepted the same. It is immaterial whether it was Rs. 7,000/- or Rs. 10,000/-. The evidence on record unerringly shows that the accused demanded and obtained illegal gratification.

57. Section 13 (1) (d) speaks about criminal misconduct by public servant if he (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage or (b) if he intentionally enriches

himself illicitly during the period of his office.

58. In order to prove the charge under Section 13(1)(d), it is not necessary for the prosecution to prove that the accused demanded illegal gratification.

59. The decision of the Hon'ble Supreme Court in ***C.K. Damodaran Nair v. Govt. of India***, reported in ***(1997) 9 SCC 477*** may be relied upon in this regard.

60. On careful perusal of the evidence on record, this Court finds that the prosecution was able to produce satisfactory evidence to prove payment of bribe and to show that the accused has voluntarily accepted the money knowing it to be bribe. Therefore, the learned trial Judge committed error in recording order of acquittal in favour of the accused.

61. In view of the above discussion I hold on careful consideration of evidence on record as well as the submission made by the learned Sr. Counsels for the parties that the appellant has been able to bring home the charge against the accused under Section 7 and Section 13(1)(d) of the Prevention of Corruption Act.

62. In this regard, this Court records that it is immaterial to consider that the accused is entitled to get benefit of doubt on the ground that departmental proceeding against her

was dismissed.

63. For the offence punishable under Section 7 of the Prevention of Corruption Act, the respondent shall be punished with imprisonment for a term which shall not be less than three years but which may extend to seven years and was also liable to fine.

64. For the offence punishable under Section 13(1)(d), the respondent shall be punishable with imprisonment for a term which shall not be less than four years but which may extend to 10 years and shall also be liable to fine.

65. The respondent is, therefore, convicted accordingly.

(Bibek Chaudhuri, J)

skm/-

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