A VINOD KUMAR GARG

v.

STATE (GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI)

B (Criminal Appeal No. 1781 of 2009)

NOVEMBER 27, 2019

[INDU MALHOTRA AND SANJIV KHANNA, JJ.]

Prevention of Corruption Act, 1988: ss.7 and 13 – Demand and acceptance of illegal gratification – Prosecution case was that the appellant-Inspector, DESU demanded bribe money from PW-2 for providing electricity connection to his shed – On PW-2's complaint, trap was laid on the fateful day – Currency notes were subjected to chemical treatement – Raiding party along with PW-2, PW-3 and PW-5 proceeded to the DESU office – When PW-2 approached appellant, he took him to a garment shop on his scooter and went inside the shop where he asked PW-2 to give the money – PW-2 gave currency notes to appellant in a polythene bag which was put in appellant's pant pocket as directed by the appellant – PW-3 (panch witness) present in the immediate vicinity gave signal to the raiding party – Inspector (PW-5) in the presence of PW-2 and PW-3 recovered tainted money from the pant pocket of the appellant – Conviction of appellant by courts below – Challenged on the ground that there were major contradictions on material aspect in the testimonies of prosecution witnesses – Held: Minor discrepancy and inability of prosecution witnesses to remember the exact details of whether or not the handwash or pant wash was done would not justify acquittal of the appellant – Deviations between the testimonies of PW-2 and PW-3 would not mean that the demand and payment of bribe, the trap and seizure of the bribe money was not proved – The contradictions that crept in the testimonies of PW-2 and PW-3 on the question of the total amount demanded were immaterial and inconsequential as it was proved that the bribe was demanded and taken by the appellant on fateful day – The variations as highlighted would lose significance in view of the proven facts on the recovery of bribe money from the pant pocket of the appellant, on which depositions of PW-2, PW-3 and PW-5 were identical and not at variance – The

money recovered was the currency notes that were treated and noted in the pre- raid proceedings – The contradictions as pointed out were insignificant when juxtaposed with the vivid and eloquent narration of incriminating facts proved and established beyond doubt – Given the time gap of five to six years, minor contradictions on some details were bound to occur and are natural – The witnesses are not required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and passage of time – Picayune variations do not in any way negate and contradict the main and core incriminatory evidence of the demand of bribe, reason why the bribe was demanded and the actual taking of the bribe that was paid, which are the ingredients of the offence under ss. 7 and 13 of the Act, that have been proved and established beyond reasonable doubt – Documents prepared contemporaneously affirmed the primary and ocular evidence – Therefore, there was no good ground and reason to upset and set aside the findings recorded by the trial court that were upheld by the High Court.

Prevention of Corruption Act, 1988: s.20 – Presumption as to acceptance of illegal gratification – In the case at hand, the condition precedent to drawing a legal presumption that the accused demanded and was paid the bribe money was proved and established by the incriminating material on record – Thus, the presumption under s.20 of the Act was applicable for the offence committed by the appellant under s.7 of the Act – Appellant was found in possession of the bribe money and no reasonable explanation was furnished that may rebut the presumption.

Prevention of Corruption Act, 1988: s.17 – Procedural lapse – Effect on prosecution case – Contention of appellant that investigation was not conducted by the police officer by the rank and status of the Deputy Superintendent of Police or equal, but by Inspector (PW-5) and Inspector (PW-7) – Held: The contention is rejected for the reason that while this lapse would be an irregularity and unless the irregularity has resulted in causing prejudice, the conviction will not be vitiated and bad in law – Appellant did not allege or even argue that any prejudice was caused and suffered because the investigation was conducted by the police officer of the rank of Inspector.

A *Prevention of Corruption Act, 1988: s.19 – Sanction for prosecution – Appellant challenged the validity of sanction order – Held: There was no error in the sanction order – What the law requires is the application of mind by the Sanctioning authority on the material placed before it to satisfy itself of prima facie case that would constitute the offence – Sanctioning authority in his* B *cross- examination was clear and categoric that he had received the report of the Investigating Officer along with the kalandra of oral and documentary evidence – Sanctioning authority examined and considered the relevant material in the form of oral and documentary evidence that were a part and parcel of the kalandra.*

C *Prevention of Corruption Act, 1988: s.19(1) – A mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby – s.19(1) of the Act is matter of procedure and does not go to the root of the jurisdiction and once the cognizance has been* D *taken by the court under the Code, it cannot be said that an invalid police report is the foundation of jurisdiction of the court to take cognizance and for that matter the trial.*

Dismissing the appeal, the Court

HELD: 1.1 The deviations between the testimonies of PW- E **2 and PW-3 does not mean that the demand and payment of bribe, the trap and seizure of the bribe paid is not proved. The Inspector who had conducted the raid (PW-5) had deposed about the recovery of bribe money on lines similar to the version of PW-2 and PW-3. Turning to the question of washing the polythene** F **bag, the hand-wash and the pant wash of the appellant, PW-5 had stated that phenolphthalein powder was applied to the currency notes and after the appellant was detained the polythene packet was washed and the wash was transferred to the bottles marked P1 and P2 which were taken into possession. The polythene bag was also seized. The aforesaid exhibits, i.e. P1 and P2 and the** G **papers prepared have been accepted and proved in evidence by PW-2 and PW-3. [Paras 8, 9] [1145-B-C; 1146-A-C]**

1.2 Regarding the hand-wash, PW-2 could not recollect full facts and had stated that as far as he could remember, the appellant had given his hand-wash and the polythene bag was H **also washed. PW-2 had identified his signature on the bottles**

containing the wash of the polythene bag and also the signature on the papers prepared. PW-3 had stated that the pant wash was not done. *Ex facie* the hand wash and the pant wash were not done as the coated money was put in the polythene bag. Polythene bag was washed and the wash kept in the bottles as has been deposed by PW-5. Minor discrepancy and inability of PW-2 and PW-3 to remember the exact details of whether or not the handwash or pant wash was done would not justify acquittal of the appellant. [Para 10] [1146-C-E]

1.3 The contradictions that have crept in the testimonies of PW-2 and PW-3 and on the question of the total amount demanded or whether PW-2 had earlier paid Rs.500/- are immaterial and inconsequential as it is indisputable that the bribe was demanded and taken by the appellant on the fateful day. The variations as highlighted lose significance in view of the proven facts on the recovery of bribe money from the pant pocket of the appellant, on which depositions of PW-2, PW-3 and PW-5 are identical and not at variance. The contradictions as pointed out and noted are insignificant when juxtaposed with the vivid and eloquent narration of incriminating facts proved and established beyond doubt and debate. It would be sound to be cognitive of the time gap between the date of occurrence, 3rd August 1994, and the dates when the testimony of PW-2 was recorded, 9th July 1999 and 14th September 1999, and that testimony of PW-3 was recorded on 18th December 2000 and 30th January 2001. Given the time gap of five to six years, minor contradictions on some details are bound to occur and are natural. The witnesses are not required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and passage of time. Documents prepared contemporaneously affirm the primary and ocular evidence. Therefore, there is no good ground and reason to upset and set aside the findings recorded by the trial court that were upheld by the High Court. [Para 11] [1146-F-H; 1147-A-D]

State of U.P. v. Dr. G.K. Ghosh **(1984) 1 SCC 254 : [1983] 3 SCR 993 – relied on.**

2. On the question of reason for the demand and payment of the bribe, the complainant (PW-2) is categoric that he had taken industrial shed on hire from PW-6. The shed did not have

A **an electricity meter. PW-6 had denied having given the said shed on rent and was declared hostile. The testimony of PW-6 is, however, highly doubtful and not trustworthy, for he had failed and avoided to answer the question from whom he had purchased the shed. The fact that the shed did not have an electricity**
B **connection as deposed to by PW-2 has not been challenged. PW-2 in his cross-examination had specifically denied the suggestion that he has not taken the shed on hire/rent. Interestingly, in the cross-examination one of the suggestions put to PW-2 was that he had given an application for electricity connection to the predecessor of the appellant and not to the appellant, thus,**
C **suggesting that PW-2 wanted installation of an electricity meter for the shed. Therefore, the contention of the appellant that PW-2 had falsely deposed that he had taken the industrial shed on hire which did not have an electricity connection is not accepted. The deposition of PW-2 that he wanted an electricity connection**
D **to be installed in the shed should be accepted. [Para 12] [1146-F-G; 1147-A-C]**

3. The statutory presumption under Section 20 of the Act can be confuted by bringing on record some evidence, either direct or circumstantial, that the money was accepted other than
E **for the motive or the reward under Section 7 of the Act. The standard required for rebutting the presumption is tested on the anvil of preponderance of probabilities which is a threshold of a lower degree than proof beyond all reasonable doubt. In the case at hand, the condition precedent to drawing such a legal**
F **presumption that the accused has demanded and was paid the bribe money has been proved and established by the incriminating material on record. Thus, the presumption under Section 20 of the Act becomes applicable for the offence committed by the appellant under Section 7 of the Act. The**
G **appellant was found in possession of the bribe money and no reasonable explanation is forthcoming that may rebut the presumption. Further, the recovery of the money from the pocket of the appellant has also been proved without doubt. Therefore, money was demanded and accepted not as a legal remuneration but as a motive or reward to provide electricity**
H **connection to PW-2 for the shed. [Paras 13, 14] [1149-C-F]**

4. PW-1 had issued and granted sanction for prosecution of the appellant. He had deposed that the appellant was working as an inspector in DESU and he was the competent officer to remove him. He had, after carefully examining the allegations contained in the material placed before him, granted the sanction for prosecution vide. PW-1 was specifically cross-examined and questioned whether "he had received the copy of the statement of the witnesses recorded under Section 161 of the Code or the C.F.S.L report". It is obvious that he had not asked for and received these reports or the statements under Section 161 of the Code. PW-1 in his cross- examination was, however, clear and categoric that he had received the report of the Investigating Officer along with the *kalandra* of oral and documentary evidence. The witness it is apparent may not be familiar with the statements under Section 161 of the Code etc., but he had certainly examined and considered the relevant material in the form of oral and documentary evidence that were a part and parcel of the *kalandra*. [Paras 16, 17] [1150-A-B; 1151-D-F]

5. The last contention of the appellant is predicated on Section 17 of the Act and the fact that the investigation in this case was not conducted by the police officer by the rank and status of the Deputy Superintendent of Police or equal, but by Inspector (PW-5) and Inspector (PW-7). The contention has to be rejected for the reason that while this lapse would be an irregularity and unless the irregularity has resulted in causing prejudice, the conviction will not be vitiated and bad in law. The appellant has not alleged or even argued that any prejudice was caused and suffered because the investigation was conducted by the police officer of the rank of Inspector. [Para 19] [1153-C-D]

Mohd. Iqbal Ahmed v. State of A.P. **(1979) 4 SCC 172 : [1979] 2 SCR 1007 – relied on.**

6. A mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby. Section 19(1) of the Act is matter of procedure and does not go to the root of the jurisdiction and once the cognizance has been taken by the court under the Code, it cannot be said that an invalid police report is the foundation of jurisdiction of the court to take cognizance

A **and for that matter the trial. The conviction of the appellant under Sections 7 and 13 of the Act is upheld. [Paras 20, 21] [1153-F-G; 1154-A]**

State of Karnataka v. Ameerjan **(2007) 11 SCC 273 : [2007] 9 SCR 1105 ;** *State of Maharashtra v. Mahesh G. Jain* **(2013) 8 SCC 119 : [2013] 3 SCR 850 ;** *Ashok Tshering Bhutia* v. *State of Sikkim* **(2011) 4 SCC 402 : [2011] 3 SCR 242 – relied on.**

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Case Law Reference

[1983] 3 SCR 993	**relied on**	**Para 11**
[1979] 2 SCR 1007	**relied on**	**Para 18**
[2007] 9 SCR 1105	**relied on**	**Para 18**
[2013] 3 SCR 850	**relied on**	**Para 18**
[2011] 3 SCR 242	**relied on**	**Para 20**

C

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1781 of 2009.

From the Judgment and Order dated 07.01.2009 of the High Court of Delhi at New Delhi in Criminal Appeal No. 286 of 2002

Pravin Parekh, Sr. Adv., Lalit Chauhan, Aditya Sharma, Ms. Anwesha Padhi, Paritosh Arora, Nikhil Ramdev, M/S. Parekh & E Co., Advs. for the Appellant.

Ms. Aishwarya Bhati, Sr. Adv., V. Balaji, Sanjay Kumar Tyagi, B. V. Balram Das, Mrs. Anil Katiyar, Advs. for the Respondent.

The Judgment of the Court was delivered by

F **SANJIV KHANNA, J.**

1. The impugned judgment dated 7th January 2009 passed by the High Court of Delhi upholds conviction of Vinod Kumar Garg ('the appellant', for short) under Sections 7 and 13 of the Prevention of Corruption Act, 1988 ('the Act', for short) imposed by the Special Judge, Delhi vide judgement dated 27th March 2002. The appellant has been G sentenced to undergo rigorous imprisonment for one and a half years, and fine of Rs. 1,000/- for each offence and in default of payment to undergo simple imprisonment for three months on both counts separately. The sentences have been directed to run concurrently.

2. Challenging the conviction, the learned senior advocate for the H appellant submits that there are major contradictions on material aspects

in the testimonies of the complainant Nand Lal (PW-2) and the panch witness Hemant Kumar (PW-3). Nand Lal (PW-2) in his court testimony recorded on 9th July 1999 had denied to having paid any money to the appellant prior to lodging of the complaint, but in his complaint (Exhibit PW-2/A) dated 2nd August 1994, Nand Lal (PW-2) had alleged that he had fifteen days back paid Rs. 500/- to the appellant. Further, Nand Lal (PW-2) in his examination-in-chief on hand-wash had claimed that it was taken and perhaps polythene bag was also washed, but in his cross-examination PW-2 had accepted that hand-wash of the appellant was not taken. Similarly, Hemant Kumar (PW-3) had contradicted the version in his examination that the pant wash of the accused was taken at the Anti-Corruption Branch, as in his cross-examination Hemant Kumar (PW-3) had accepted the suggestion that the hand-wash and pocket wash were not taken after the appellant was apprehended. Inspector Rohtash Singh (PW-5) who had conducted the raid has admitted that he had not taken the hand-wash or the pant wash of the appellant from which the polythene packet containing the bribe money was allegedly seized. Further, the testimonies of Nand Lal (PW-2) and Hemant Kumar (PW-3) reveal a major dichotomy on the amount that the appellant had allegedly demanded as bribe. In his cross-examination Nand Lal (PW-2) had denied the suggestion that the appellant had asked for Rs. 2,000/- to be paid separately by Nand Lal (PW-2) and Hemant Kumar (PW-3) as the two were partners, contrary to the version given by Hemant Kumar (PW-3) who had deposed that the appellant had told them in the gallery that each of them should pay Rs. 2,000/-. There is a contradiction in the testimony of Nand Lal (PW-2) and Hemant Kumar (PW-3) as to the place where the allegedly bribe money was asked and paid to the appellant. As per Nand Lal (PW-2) the bribe was asked and paid in the garment shop, whereas Hemant Kumar (PW-3) has denied that the payment took place inside the cloth shop. Drawing our attention to the version of Nand Lal (PW-2), it was submitted that Hemant Kumar (PW-3) was not an eyewitness or a panch witness to the demand and payment of alleged bribe money. In view of the irreconcilable versions of the two witnesses, the appellant is entitled to benefit of doubt. Further, there is no evidence or document to show that Nand Lal (PW-2) was the tenant in the shed for which the appellant had statedly asked for bribe money to provide the electricity meter. Anil Ahuja (PW-6), the owner of the shed has not supported the case of the prosecution and had contradicted the claim made by Nand Lal (PW-2) in his complaint (Exhibit PW-2/A).

A 3. On the question of demand and payment of bribe for performance of public duty or forbearance to perform such duty, we would read the testimonies of the complainant – Nand Lal (PW-2), panch witness – Hemant Kumar (PW-3), and the Inspector of Anti-Corruption Branch – Rohtash Singh (PW-5) in unison. Nand Lal (PW-
B 2) has deposed having visited the DESU office and his meeting with Inspector Yadav for installation of electricity meter in the shed for a fan and a light. Nand Lal (PW-2) after shifting his goods etc. to the shed had again visited the DESU Office and learnt that Inspector Yadav had been transferred. Nand Lal (PW-2) had met his successor-the appellant, who had asked him to move an application for providing a
C meter for the electricity connection. The appellant had also stated that electricity could be provided without meter for which Nand Lal (PW-2) was asked to pay bribe of Rs.2,000/-. Thereupon, Nand Lal (PW-2) had expressed his inability to pay Rs.2,000/- in lumpsum but he could pay the bribe amount in instalments of Rs.500/- each, which the appellant
D had agreed and accepted. Thereafter, Nand Lal (PW-2) had visited the Anti-Corruption Branch and lodged his complaint on 2nd August 1994 vide Exhibit PW-2/A that was signed by him at Point A. Both Hemant Kumar (PW-3) and Inspector Rohtash Singh (PW-5) have in seriatim confirmed the relevant ensuing events. Nand Lal (PW-2), Hemant Kumar (PW-3) and Rohtash Singh (PW-5) have affirmed that Nand
E Lal (PW-2) had produced five currency notes of Rs.100/- each, the serial numbers of which were duly recorded and the notes were sprinkled with powder. The three had then along with other members of the raiding team proceeded to the DESU office but the appellant had asked Nand Lal (PW-2) to come on the next day, as the work would
F not be done on 2nd August 1994. On 3rd August 1994, Nand Lal (PW-2) had again visited the Anti-Corruption Branch office where Hemant Kumar (PW-3) and Rohtash Singh (PW-5) were present. The currency notes were again subjected to chemical treatment and the raiding party had proceeded to the DESU office. Nand Lal (PW-2) and Hemant
G Kumar (PW-3) had met the appellant, who had then asked Nand Lal (PW-2) to wait on the appellant's scooter parked outside the office. After some time, the appellant came out of the office. He started the scooter and they drove for about 50 yards with Nand Lal (PW-2) sitting on the pillion seat. Nand Lal (PW-2) in his deposition has stated that he had asked the appellant to stop the scooter as the third person –
H Hemant Kumar (PW-3) was also accompanying them.

4. Thereafter, there is divergence in the version given by Nand Lal (PW-2) on one side and the version given by Hemant Kumar (PW-3) and Rohtash Singh (PW-5). Nand Lal (PW-2) has testified that the appellant after stopping the scooter went inside a garment shop. He had then asked Nand Lal (PW-2) to come inside. Nand Lal (PW-2) proceeded inside. The appellant had then demanded money from Nand Lal (PW-2) – "*lao, paise do*". The appellant had procured one polythene bag and Nand Lal (PW-2) was asked to put the money in the polythene bag and thereafter put the polythene bag in the appellant's pocket. Nand Lal (PW-2) had suggested that he would give money in the presence of the other person, i.e., Hemant Kumar (PW-3), which suggestion was not accepted by the appellant. Nand Lal (PW-2) is, however, categoric that he had as directed put the money in the pocket of the pant of the appellant. Thereafter, Nand Lal (PW-2) went outside and gave signal to the witness Hemant Kumar (PW-3) who started to move towards him. The appellant came out of the shop. Nand Lal (PW-2) also accepts that Hemant Kumar (PW-3) had given signal to the raiding team who reached the spot and had caught hold of the appellant. From the pant pocket of the appellant, a polythene bag containing the currency notes was seized. Thus, Nand Lal (PW-2) accepts that bribe was demanded and paid and that the tainted bribe money was recovered from the appellant by Rohtash Singh (PW-5) in his presence and in the presence of Hemant Kumar (PW-3).

5. Hemant Kumar (PW-3) has on the other hand unfailingly affirmed that he had joined the raiding team as panch witness and that Nand Lal (PW-2) had recorded his statement/complaint vide Exhibit PW-2/A. Hemant Kumar (PW-3) has deposed as to the five currency notes of Rs. 100/- each given by the complainant to the Anti-Corruption Branch office on which phenolphthalein powder was coated. Instructions were given. On 2nd August 1994 at about 10:00 -10:30 a.m., the raiding team had visited the DESU office but the appellant had asked Nand Lal (PW-2) to come on the next day. On 3rd August 1994 at 9:30 a.m. Hemant Kumar (PW-3) had visited the Anti-Corruption Branch office. Nand Lal (PW-2) was present and the entire exercise of powdering the currency notes etc. was repeated. Hemant Kumar (PW-3) and Nand Lal (PW-2) along with the raiding team had reached the DESU office at about 10:00 a.m. The appellant took Nand Lal (PW-2) outside the DESU office and they drove away on the scooter. Hemant Kumar (PW-3) had followed them on foot. The scooter was

A driven to a distance of about 50 yards from the DESU office. Thereupon, the appellant and Nand Lal (PW-2) had proceeded near a cloth shop where Nand Lal (PW-2) had handed over the tainted money to the appellant after placing it in a polythene bag in his presence. The appellant had kept the polythene bag with the currency notes in the right-side pant pocket of the appellant. The raiding party arrived at the B spot and recovered the notes from the right-side pocket of the pant of the appellant. The notes were tallied with the numbers already noted and the same were seized by Exhibit PW-2/C. Thereupon, the appellant-accused was taken to the Anti-Corruption Branch.

C 6. The two testimonies of Nand Lal (PW-2) and Hemant Kumar (PW-3) on visit by the raiding team to the DESU office on 2nd August 1994 when the appellant had asked Nand Lal (PW-2) to come on the next day; that on 3rd August 1994 Nand Lal (PW-2) and Hemant Kumar (PW-3) along with the raiding team had accordingly again visited the DESU office; that the appellant and Nand Lal (PW-2) had travelled D on the scooter for a short distance; and that Hemant Kumar (PW-3) had followed them on foot, are affirmed by Inspector Rohtash Singh (PW-5) who has also identically deposed, *albeit* he was not the person who had initially interacted with the appellant at the DESU office.

7. On the succeeding events, Rohtash Singh (PW-5) in his E testimony has affirmed the narration of facts as stated by Hemant Kumar (PW-3). Hemant Kumar (PW-3) gave a signal and accordingly members of the raiding team had reached the spot and apprehended the appellant. Rohtash Singh (PW-5) had then disclosed his identity to the appellant and had challenged him that the appellant had accepted the bribe money from Nand Lal (PW-2). Rohtash Singh (PW-5) had F offered for his search, but it was refused by the appellant. The appellant was searched and polythene bag containing five Rs.100/- currency notes was recovered from the right-side pant pocket of the appellant. The five notes were marked P-3 to P-7 and were seized vide seizure memo PW-2/C. The numbers on the currency notes were tallied with the pre-G raid report and were found to be the same.

8. Even if we are to accept the version of Nand Lal (PW-2), the appellant had asked for the bribe money that was paid to the appellant and at best at that time Hemant Kumar (PW-3) was not physically present inside the shop and was standing outside the shop. H Nand Lal (PW-2) in his examination-in-chief has stated that the appellant

had demanded money from him saying – *"Lao paise do"*. Thereafter, Rs. 500/- were paid as bribe by Nand Lal (PW-2) to the appellant in a polythene bag which was put in the appellant's pant pocket as was directed by the appellant. The presence of Hemant Kumar (PW-3) in the immediate vicinity remains unchallenged. In either case, we do not think that this deviation and incongruity between the depositions by Nand Lal (PW-2) and Hemant Kumar (PW-3) should result in the acquittal of the appellant. These deviations between the testimonies of Nand Lal (PW-2) and Hemant Kumar (PW-3) does not mean that the demand and payment of bribe, the trap and seizure of the bribe paid is not proved. The testimony of Rohtash Singh (PW-5) bolsters our findings. Rohtash Singh (PW-5) has deposed about the recovery of bribe money on lines similar to the version of Nand Lal (PW-2) and Hemant Kumar (PW-3). It appears that Nand Lal (PW-2) had either tried to help the appellant but was unable do so in view of the documentary evidence in the form of his written complaint – Exhibit PW-2/A signed by him at point A and other documents prepared at the spot with his signature, or because of the time gap had forgotten some facts. On the first aspect relating to the contemporaneous documents, we would refer to the cross-examination of Nand Lal (PW-2) by the Additional Public Prosecutor on 14th September 1999 which reads as under:

> "...I cannot say whether the numbers of the said GC notes were found to be same which were mentioned in the pre-raid report. It is wrong that I am not intentionally disclosing this fact. It is correct that seizure memo of GC notes were prepared in my presence which is Ex. PW 2/C which bears my signature at point A. It is correct that GC notes Ex. P3 to P7 are the same which were recovered from the possession of the accused and were seized vide memo Ex. PW 2/C. It is correct that said polythene bag was got washed in colourless solution of sodium carbonate and that solution had turned pink and that solution was transferred into two bottles and the bottles were properly sealed and labeled. Bottles are Ex. P1 and P2 which bears my signatures on each bottle at point A. Polythene bag wash Ex. P1 and P2 were taken into possession vide seizure memo Ex.PW 2/D which bears my signatures at point A. Polythene bag is Ex. P8 which bears my signature at point A. Polythene bag Ex. P8 was taken into possession vide memo Ex. PW 2/F which bears my signature at point A."

A 9. Turning to the question of washing the polythene bag, the hand-wash and the pant wash of the appellant, Rohtash Singh (PW-5) has stated that phenolphthalein powder was applied to the currency notes and after the appellant was detained the polythene packet was washed and the wash was transferred to the bottles marked P1 and P2 which were taken into possession vide Exhibit PW-2/D. The polythene bag B was also seized vide Exhibit PW-2/E. Raid memo proceedings were marked as Exhibit PW-2/G and post-raid proceedings as Exhibit PW-2/K. The aforesaid exhibits, i.e. P1 and P2 and the papers prepared have been accepted and proved in evidence by Nand Lal (PW-2) and Hemant Kumar (PW-3).

C 10. Regarding the hand-wash, Nand Lal (PW-2) could not recollect full facts and had stated that as far as he could remember, the appellant had given his hand-wash and the polythene bag was also washed. Nand Lal (PW-2) had identified his signature on the bottles containing the wash of the polythene bag and also the signature on the D papers prepared. Hemant Kumar (PW-3) had stated that the pant wash was not done. We would observe that *ex facie* the hand wash and the pant wash were not done as the coated money was put in the polythene bag. Polythene bag was washed and the wash kept in the bottles as has been deposed by Rohtash Singh (PW-5). Minor discrepancy and inability of Nand Lal (PW-2) and Hemant Kumar (PW-3) to remember E the exact details of whether or not the handwash or pant wash was done would not justify acquittal of the appellant.

11. The contradictions that have crept in the testimonies of Nand Lal (PW-2) and Hemant Kumar (PW-3) noticed above and on the question of the total amount demanded or whether Nand Lal (PW-2) F had earlier paid Rs.500/- are immaterial and inconsequential as it is indisputable that the bribe was demanded and taken by the appellant on 3rd August 1994 at about 10:30 a.m. The variations as highlighted lose significance in view of the proven facts on the recovery of bribe money from the pant pocket of the appellant, on which depositions of G Nand Lal (PW-2), Hemant Kumar (PW-3) and Rohtash Singh (PW-5) are identical and not at variance. The money recovered was the currency notes that were treated and noted in the pre-raid proceedings vide Exhibit PW-2/G. The aspect of demand and payment of the bribe has been examined and dealt with above. The contradictions as pointed out to us and noted are insignificant when juxtaposed with the vivid H and eloquent narration of incriminating facts proved and established

beyond doubt and debate. It would be sound to be cognitive of the time gap between the date of occurrence, 3rd August 1994, and the dates when the testimony of Nand Lal (PW-2) was recorded, 9th July 1999 and 14th September 1999, and that Hemant Kumar's (PW-3) testimony was recorded on 18th December 2000 and 30th January 2001. Given the time gap of five to six years, minor contradictions on some details are bound to occur and are natural. The witnesses are not required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and passage of time. Picayune variations do not in any way negate and contradict the main and core incriminatory evidence of the demand of bribe, reason why the bribe was demanded and the actual taking of the bribe that was paid, which are the ingredients of the offence under Sections 7 and 13 of the Act, that as noticed above and hereinafter, have been proved and established beyond reasonable doubt. Documents prepared contemporaneously noticed above affirm the primary and ocular evidence. We, therefore, find no good ground and reason to upset and set aside the findings recorded by the trial court that have been upheld by the High Court. Relevant in this context would be to refer to the judgment of this Court in ***State of U.P.*** v. ***Dr. G.K. Ghosh***[1] wherein it was held that in a case involving an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, it may be safe to accept the prosecution version on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and inconsistent with his innocence, there should be no difficulty in upholding the conviction.

12. On the question of reason for the demand and payment of the bribe, the complainant Nand Lal (PW-2) is categoric that he had taken industrial shed in DSIDC area, Welcome Colony, Seelam Pur, Delhi on hire from one Anil Ahuja. The shed did not have an electricity meter. Anil Ahuja, who had appeared as PW-6, had denied having given the said shed on rent and was declared hostile. The testimony of PW-6 is, however, highly doubtful and not trustworthy, for he had failed and avoided to answer the question from whom he had purchased the shed. The fact that the shed did not have an electricity connection as deposed

[1] (1984) 1 SCC 254

A to by Nand Lal (PW-2) has not been challenged. Nand Lal (PW-2) in his cross-examination had specifically denied the suggestion that he has not taken the shed on hire/rent. Interestingly, in the cross-examination one of the suggestions put to Nand Lal (PW-2) was that he had given an application for electricity connection to the predecessor of the appellant and not to the appellant, thus, suggesting that Nand Lal (PW-
B 2) wanted installation of an electricity meter for the shed. We would, therefore, reject the contention of the appellant that Nand Lal (PW-2) had falsely deposed that he had taken the industrial shed on hire which did not have an electricity connection. The deposition of Nand Lal (PW-2) that he wanted an electricity connection to be installed in the shed
C should be accepted.

13. On the said aspect, we would now refer to Section 20 of the Act which reads as under:

> "20. Presumption where public servant accepts gratification other than legal remuneration
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> D
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> (1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) or 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
> E 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
> F 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.
>
> (2) Where in any trial of an offence punishable under
> G Section 12 or under clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification
> H 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.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn."

The statutory presumption under Section 20 of the Act can be confuted by bringing on record some evidence, either direct or circumstantial, that the money was accepted other than for the motive or the reward under Section 7 of the Act. The standard required for rebutting the presumption is tested on the anvil of preponderance of probabilities which is a threshold of a lower degree than proof beyond all reasonable doubt.

14. In the case at hand, the condition precedent to drawing such a legal presumption that the accused has demanded and was paid the bribe money has been proved and established by the incriminating material on record. Thus, the presumption under Section 20 of the Act becomes applicable for the offence committed by the appellant under Section 7 of the Act. The appellant was found in possession of the bribe money and no reasonable explanation is forthcoming that may rebut the presumption. Further, the recovery of the money from the pocket of the appellant has also been proved without doubt. We, therefore, hold that money was demanded and accepted not as a legal remuneration but as a motive or reward to provide electricity connection to Nand Lal (PW-2) for the shed.

15. Pertinent in this regard would be the statement made by the appellant under Section 313 of the Code of Criminal Procedure, 1973 ('the Code', for short) wherein in response to most of the questions, the appellant had expressed his inability to answer or denied the evidence proved. The appellant had accepted his arrest but had debunked the case as false and the CFSL report (Exhibit PW-4/A) as biased and motivated. In response to the last question, the appellant had alleged that Nand Lal (PW-2) and Hemant Kumar (PW-3) had not supported the prosecution case and that he was innocent as he had never demanded or accepted any money as bribe.

16. We would now turn our attention to the two technical objections taken by the appellant in respect of the sanction order and the validity of investigation. In the present case, Navin Chawla (PW-1) had issued and granted sanction for prosecution of the appellant. He had deposed that the appellant was working as an inspector in DESU and he was the competent officer to remove him. He had, after carefully examining the allegations contained in the material placed before him, granted the sanction for prosecution vide order Exhibit PW-1/A. Paragraphs 1 and 2 of the sanction order Exhibit PW-1/A read:

> "Whereas it is alleged that Sh. Vinod Kumar Garg while functioning as Inspector, DESU (now DVB) Office Seelam Pur, Delhi, a public servant in the discharge of this official duty demanded Rs. 2,000/- as illegal gratification from Sh. Nand Lal S/o Shri Megh Raj r/o H.N. 341/20, Mangal Sain Building, Bagh Kare Khan, Delhi-110007 in consideration for installing an electric meter at shop No. A-2 DSIDC Welcome Colony, Seelam Pur, Delhi, without proper formalities. Sh. Vinod Kumar Garg, Inspector, DESU (now DVB) office Seelam Pur, Delhi, demanded, accepted and obtained Rs. 500/- (second instalment) as illegal gratification from the complaint.
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> xx xx xx
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> Whereas I, Navin Chawla, Chairman, D.V.B., New Delhi being the authority competent to remove Sh. Vinod Kumar Garg, DVB Office Seelam Pur, Delhi from office/services after fully and carefully examining the material before me in regard to the said allegation and circumstances of the case consider the said Inspector, Vinod Kumar Garg, DVB Office Seelam Put, Delhi be prosecuted in the Court of Law for the said offence/offences."

17. Relevant portion of Navin Chawla's (PW-1) examination-in-chief and the entire cross-examination read as under:

> "After fully and carefully examining the allegation contained in the material placed before me and the circumstances of the case I granted sanction for prosecution of Vinod Kumar Garg vide my order Ex. PW 1/A. This order bears my signature at point 'A'."
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> xx xx xx

Cross-Examination

"I had received a request for grant of sanction from the Anti-Corruption Branch. I had received along with the report of the I.O. calendars (*sic* kalandra) of oral and documentary evidence. It is correct that in this case, I had not received copies of statements of witnesses recorded u/s. 161 P.C. (*sic* Cr.P.C) or the seizure memos regarding the seizure of the bribe money. I had not received any copy of the report of the C.F.S.L. I had also received a format of the sanction order. I did not verify from the records of DESU whether the complainant had applied for an electric connection. I did not verify whether the complaint was a tenant or allottee of D.S.I.D.C. shed. In fact, I had granted the sanction only on the basis of the report of the IO and calendars (*sic* kalandra) of oral and documentary evidence furnished by the Anti-Corruption Branch."

Navin Chawla (PW-1) was specifically cross-examined and questioned whether "he had received the copy of the statement of the witnesses recorded under Section 161 of the Code or the C.F.S.L report". It is obvious that he had not asked for and received these reports or the statements under Section 161 of the Code. Navin Chawla (PW-1) in his cross-examination was, however, clear and categoric that he had received the report of the Investigating Officer along with the *kalandra* of oral and documentary evidence. The witness it is apparent may not be familiar with the statements under Section 161 of the Code etc., but he had certainly examined and considered the relevant material in the form of oral and documentary evidence that were a part and parcel of the *kalandra*. We have to read the cross-examination of Navin Chawla (PW-1) in entirety and not in piecemeal.

18. The appellant has relied upon the judgments of this Court in ***Mohd. Iqbal Ahmed*** v. ***State of A.P.***[2] and ***State of Karnataka*** v. ***Ameerjan***[3] to challenge the sanction order. In ***Mohd. Iqbal Ahmed*** (supra) it was observed that a valid sanction is the one that is granted by the Sanctioning Authority after being satisfied that a case for sanction is made out constituting the offence. It is important to be mindful of the observations made by the Court as reproduced below:

[2] (1979) 4 SCC 172
[3] (2007) 11 SCC 273

A "3. […] 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 applied its mind for the same…"

Similarly, in ***Ameerjan*** (supra), it was observed:

B "10. […] Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as (*sic* to) the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show materials had in fact been produced."

C

Therefore, what the law requires is the application of mind by the Sanctioning Authority on the material placed before it to satisfy itself of *prima facie* case that would constitute the offence. On the said aspect, the later decision of this Court in ***State of Maharashtra*** v. ***Mahesh G. Jain***[4] has referred to several decisions to expound on the following principles of law governing the validity of sanction:

D

"14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

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14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.

F

14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.

14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

G

14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

H [4] (2013) 8 SCC 119

14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.

14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity."

The contention of the appellant, therefore, fails and is rejected.

19. The last contention of the appellant is predicated on Section 17 of the Act and the fact that the investigation in the present case was not conducted by the police officer by the rank and status of the Deputy Superintendent of Police or equal, but by Inspector Rohtash Singh (PW-5) and Inspector Shobhan Singh (PW-7). The contention has to be rejected for the reason that while this lapse would be an irregularity and unless the irregularity has resulted in causing prejudice, the conviction will not be vitiated and bad in law. The appellant has not alleged or even argued that any prejudice was caused and suffered because the investigation was conducted by the police officer of the rank of Inspector, namely Rohtash Singh (PW-5) and Shobhan Singh (PW-7).

20. This Court in ***Ashok Tshering Bhutia*** v. ***State of Sikkim***[5] referring to the earlier precedents has observed that a defect or irregularity in investigation however serious, would have no direct bearing on the competence or procedure relating to cognizance or trial. Where the cognizance of the case has already been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless a miscarriage of justice has been caused thereby. Similar is the position with regard to the validity of the sanction. A mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby. Section 19(1) of the Act is matter of procedure and does not go to the root of the jurisdiction and once the cognizance has been taken by the court under the Code, it cannot be said that an invalid police report is the foundation of jurisdiction of the court to take cognizance and for that matter the trial.

[5] (2011) 4 SCC 402

A 21. For the foregoing reasons, we dismiss the present appeal and uphold the conviction of the appellant under Sections 7 and 13 of the Act and the sentences as imposed. The appellant would surrender within a period of four weeks from today to undergo the remaining sentence. On failure to surrender, coercive steps would be taken by the trial court. All pending applications are also disposed of.

Devika Gujral Appeal dismissed.