* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Crl. Appeal No.750/2002**

% **Reserved On:12.05.2011**
Date of Decision:24.05.2011

Anna Wankhade .... **APPELLANT**
Through: Mr.Abhishek Prasad and Mr.S.K. Bhatnagar, Advocates

Versus

Central Bureau of Investigation (Through State) .... **RESPONDENT**
Through: Mr.Narender Mann, Special Public Prosecutor for State/CBI.

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

1.	Whether reporters of Local papers be allowed to see the judgment?	YES
2.	To be referred to the reporter or not?	YES
3.	Whether the judgment should be reported in the Digest?	YES

M.L. MEHTA, J.
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1. The appellant has been convicted by learned Special Judge, Shri R.K. Gauba, in Corruption Case No.14/98 vide judgment dated 6th September, 2002 and sentenced vide order dated 10th September, 2002 as under:-

> "Sentenced for rigorous imprisonment for four years with a fine of ₹500/- each under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act"). Substantial sentences shall run concurrently. In default of payment of fine, the convict was to further undergo rigorous imprisonment for three months on each count."

2. By virtue of the present appeal, the appellant has assailed the conviction imposed upon him by the learned Special Judge. The prosecution story as set out briefly is that one Anil Kumar Sharma (PW6) was allottee of a flat from Delhi Development Authority (DDA). Though he had made entire payment along with interest, but the possession of the flat and other formalities remained to be completed on the part of DDA. On behalf of Anil Kumar Sharma (PW6), his brother in law, Mr.K.S. Bhardwaj (PW3), complainant in this case was making representations to the concerned authorities in DDA regarding expediting the handing over of the possession of the flat. It so happened that the accused was dealing with the matter of the completion of the formalities regarding handing over possession of the flat allotted in favour of PW6. It is in this connection that the complainant PW3 came in contact with accused and met him several times for doing the needful. During the process, the accused allegedly demanded a sum of ₹10,000/- from PW3 and to be paid to him in his office on 30th June after 2 PM. The complainant (PW3) instead

approached CBI and made a complaint (Ex.PW3/A) on 30th June stating that he did not want to pay any bribe and want to take legal action against the accused. On this FIR (Ex.PW7/B) came to be registered. The matter was entrusted to Investigating Officer (IO), Inspector Anil Sharma (PW7), for laying trap. I.O. (PW7) requisitioned two independent witnesses, namely, Prem Narain (PW2) and Pawan Kumar (PW5), the clerks from the office of NDMC. PW6 arranged ₹4,000/- in the form of 40 currency notes of denomination of ₹100/- each (Ex.P1 to P40), the numbers of which were noted down in the memo (Ex.PW2/B) prepared during the pre-trap proceedings. The usual procedure of treating the notes with phenolphthalein powder and giving demonstration thereof regarding the manner in which it reacts, was all done by I.O.(PW7) in the presence of complainant (PW3), Ajit Kumar Sharma (PW6) and two independent witnesses (PW2 and PW5). The treated currency notes were handed over to the complainant with the instruction to hand them over to the accused on specific demand. PW2 was directed to remain with the complainant as a shadow witnesses and to hear the conversation and observe the proceedings. He was also instructed to give signal after completion of the transaction. As per the pre-arranged programme, the trap party reached the office of DDA. Complainant (PW3), his brother in law, Mr.Anil Kumar Sharma

(PW6), and the shadow witness (PW2) went to contact the accused in his office. It is during this meeting that the accused allegedly repeated the demand of bribe in the presence of shadow witness. The complainant handed over the trap money to the accused which was taken by him with his left hand. Immediately thereafter the shadow witness gave pre-determined signal and thereupon the raiding party rushed and apprehended the accused. The trap money was recovered from his left hand through PW5. In the meantime, R.K. Azad (PW9), Assistant Director of the concerned Section of DDA, also reached there and rest of the formalities including taking wash of left hand of the accused and preparation of documents etc. was done in his presence. After the required sanction (PW1/A), the accused was sent for prosecution.

3. The charges were framed against the accused under Section 7 and 13(2) read with Section 13(1)(d) of the Act to which he pleaded not guilty. The prosecution examined as many as 10 witnesses. The statement of the accused was recorded under Section 313 Cr.P.C. wherein incriminating evidence appearing against him was put to him. He denied the entire evidence regarding demand and acceptance of the bribe. It was put to him that PW3 was the attorney of the allottee (PW6) to which he

stated that he refused to hand over the papers to the complainant since he had no authorization of the allottee. He, however, admitted that PW3 had met him in connection with the handing over of papers of flat. He stated that he (PW3) tried to pressurize him to hand over the papers and since he was not obliging him, he got him falsely implicated. He, however, admitted that the complainant had told him that he had paid installments for the flat from his own funds. The accused did not lead any evidence in defence.

4. The foremost contention that was sought to be raised by the learned counsel for the defence was that the accused has been falsely implicated by PW3 in collusion with CBI. He submitted that the allottee of the flat in question was Ajit Kumar Sharma (PW6) and not the complainant (PW3) and so the latter had no business to approach the accused for asking for issue of possession letter. He also submitted that it was PW3, who had submitted documents under the forged signatures of PW6 without any authority letter or power of attorney of PW6 in this regard. Learned counsel drew my attention to some part of the cross-examination of PW6, Ajit Kumar Sharma, who was allottee of the flat.

5. There is no dispute with regard to this that the allottee of the flat was PW6, Ajit Kumar Sharma. It is also not in dispute that the complainant is the brother in law of PW6. It is worth noting that PW6 had stated that he was called to the office of DDA by the accused several times and that the accused obtained his signatures on some papers. He also stated that he had authorised his brother-in-law (PW3) to deal with DDA office regarding his flat. In his cross-examination also, he maintained that he authorised his brother-in-law (PW3) to deposit the installments in DDA on his behalf and he was also authorised to put his signatures in DDA papers including the challan forms. He did not know as to which applications were filed by the complainant (PW3) on his behalf in DDA. Letters/challans Ex.PW3/DA, Ex.PW3/DB, PW3/DC and PW6/DA did not bear his signatures, but that of his brother-in-law (PW3). From this evidence on record, it can be seen that some of the documents were submitted by the complainant in the office of DDA in respect of the flat in question. May be that these were signed by the complainant in the name of his bother-in-law (PW6) and that was not proper, but the fact remains that admittedly he was an authorised representative of PW6 and was representing him in the matter before DDA. In any case, that piece of evidence was of no help to the accused inasmuch rather it leads towards

veracity of the prosecution case that the accused was not issuing the possession letter and doing the needful and was demanding bribe for that and that accused got the signatures of PW6 on some papers in the file before the trap. This also goes in consonance with the defence of the accused that he was refusing to issue the possession letter to the complainant. It is in this background that it would be seen that whether the testimonies of the prosecution witnesses have been well-analysed by the learned Special Judge.

6. It may be noted that PW3 had categorically stated and maintained that he had gone to DDA office to collect the relevant papers and met the accused, who had demanded illegal gratification of ₹10,000/- for delivery of papers to him. PW6 was a small-time tea shop vender and had meager income and had even arranged partial payment of ₹1,500/- from his brother-in-law (PW3). PW6 also conceded that installments had been deposited by his brother-in-law (PW3) who had also filed the challan forms and signed some papers.

7. The submission of learned counsel that if DDA had come to know that it was PW3, who was interested in getting the flat and not the allottee (PW6), DDA would have cancelled the allotment

though apparently looked worth appealing, but is of no help to the accused in the given facts and circumstances. In fact this was all the more reason for the accused to demand bribe so as to save complainant from cancellation of the flat by DDA. Assuming that some of the applications were unauthorisedly signed by the complainant on behalf of his brother-in-law (PW6), and that the same may not be legal and could have brought him some trouble, this may also be the reason for the accused to ask for bribe. The evidence shows that accused abused this fact situation to his advantage and demanded payment of bribe for doing the favour of getting signatures of PW6 and to further process the file. There is nothing in the material on record to show that PW3 ever intended to get the flat in question in his name or for such purpose he was trying to pressurize the accused to hand over the documents to him or was avoiding obtaining proper authorization/attorney from the allottee. The fact remains that PW3 was acting as auhtorised representative of PW6.

8. Learned counsel next submitted that there were many discrepancies in the testimonies of the witnesses PW2, PW3, PW5, PW6 and PW7 and so they are not reliable. It was pointed out by the learned counsel that PW3 stated that he along with

PW6 went to CBI office on 30.06.1997, whereas PW6 said that during the period 26.06.1997 to 30.06.1997, he did not meet anyone. This was in fact no discrepancy. If we read the relevant part of the PW3 and PW6, it may be seen that PW3 stated that after meeting the accused, he discussed the matter with his brother-in-law (PW6) and thereafter he along with him went to office of CBI at about 2.00 PM where he narrated the details of bribe to SP, CBI, and thereafter he wrote the complaint and gave it to the Inspector. Stating by PW6 that he did not meet anyone between 26.06.1997 to 30.06.1997 cannot be interpreted that he did not meet his brother in law PW3 and did not go to the office of CBI. He further clarified by stating that he does not know as to whom he met in the office of CBI on 30.06.1997 where he and his brother-in-law PW3 had gone.

9. No doubt there appear to be some discrepancy with regard to mention of time of registration of FIR as 12 Hrs in Ex.PW7/B and PW3 stating about his reaching the office of CBI at 2.00 PM, but this can only be attributed to human error or loss of memory after such a long time. This being very trivial cannot be said to be sufficient to create a dent in the prosecution case.

10. With regard to PW2 and PW5, learned counsel submitted that these witnesses are not reliable being stock witnesses of CBI. Learned counsel pointed out that PW2 stated that he along with PW5 went to CBI office on the written requisition by CBI, but later in his cross-examination stated that PW7, Inspector Anil Kumar Sharma came to their office to take them. This was in fact no discrepancy. It is correct that PW2 earlier joined a raid conducted by CBI and PW5 also joined a raid about 1½ years ago, but that alone was not sufficient to brand them as stock witnesses and discard their testimonies.

11. It was the case of prosecution that both these witnesses were requisitioned by CBI from the office of NDMC. PW5 in cross had admitted about the written order received from CBI in this regard and that one official came to their office and they both went along with him. PW2 had stated that he had received a written order to report to CBI office and the said orders also included the name of PW5, Pawan Kumar. The mere fact that both of them have been earlier associated with some trap cases by CBI cannot make them unreliable. They are the official employees of NDMC and were duty bound to join the proceedings when so ordered by their senior officers on the request made by CBI.

12. It was next submitted by the learned counsel that it was unbelievable that the accused was contacted by the complainant (PW3) and PW6 in the presence of PW2 at about 3.55 PM when the accused also allegedly obtained signatures of PW3 at three places in his office file, but came to take bribe after 40-45 minutes on the ground floor. In other words the submission of the learned counsel is that if the accused was to take bribe, he would have taken it there in his office and not after some time and that too on the ground floor. Further, it was also pointed out that since the signatures in the name of PW6 were already there in the file although forged, there was no need to obtain the signatures of PW6 at that time by the accused. All these do not appear to be either any discrepancy or infirmity in the prosecution case inasmuch invariably it is normal human nature to accept illegal gratification at some safer place away from the public view. In the office where the accused was seated, there may be other officials near and around him and may be to avoid the viewing, he after getting the signatures of PW6, for replacing the papers already on record signed by the complainant, advised the complainant and others to reach on the ground floor hall which he might have found more safer than his work place.

13. Learned counsel next submitted that the appellant did not obtain the signatures of PW6 on the file but these were obtained by CBI after the file was seized. PW7 (TLO) deposed about the recovery of file Ex.PW2/C from the accused in which he had obtained signatures of PW6 earlier on pages 1, 3 and 19. All the witnesses, namely, PW3, PW2 and PW6 have categorically deposed that the accused had obtained the signatures of PW6. In fact no dispute is raised by the accused about the seizure of the file from his possession by the TLO/PW7.

14. It was also pointed out by the learned counsel that there was infirmity in the prosecution case inasmuch as PW3 in his statement revealed that he was handed over a micro cassette recorder by CBI to record the conversation with the accused, but it was ostensibly not made part of the court record by CBI. Learned counsel submitted that the same will lead to draw an adverse inference against the prosecution that there was no talk of demand in the conversation that took place between the complainant and the accused. This was also submitted before the learned Special Judge and the same was dealt with by him by recording that PW3 testified that the cassette was played during the pre-trap proceedings earlier in CBI office to see that it was blank and he was instructed as to how the same was to be used.

He stated that he did not remember the name of CBI officer, who had handed over the recorder to him. The complainant was cross-examined by the learned prosecutor on this ground since he was trying to introduce a new version about the use of tape recorder. In his cross-examination, the complainant PW3 explained that there was no mention of the tape recorder in the court proceedings since it was found to be having noise of the crowd and the conversation between him and the accused was not audible. The reasons recorded by the learned Special Judge in rejecting the contention of the learned defence counsel in this regard are these - “I must reject this plea for the simple reason that the theory about use of cassette recorded apparently has been introduced so as to create doubts. This fact has not been spoken of by any other witness. The Handing over memo, to which PW3 was also a signatory, does not reflect such additional arrangement. It is not the case of PW3 that the Handing Over Memo was recast and signatures of all including PW3 were taken afresh on the modified Memo. There is explanation as to why he would not object to omission about use of such machine in the Handing Over Memo at the time of signing it, if it had actually been arranged.” I find myself in agreement with these reasons to reject this contention of the learned counsel.

15. Learned counsel also pointed out that the testimony of PW5, who had spoken about the recovery of the tainted notes from the pocket of the accused is at variance from the other witnesses, who had stated about the recovery from the hand of the accused. The statement of PW5 is definitely at variance from the other witnesses, but then the said witness has no where explained as to when the money was put into the pocket of the accused. It is noted that PW5 had categorically stated about having seen the complainant giving the money to the accused. This small variance in the version of PW5 in any case, can not make him either unreliable or to shake the prosecution version that the money was recovered from the left hand of the accused. It is noted that in answer to a question this witness stated that he did not remember from which hand of the accused the money was recovered. Then he also clearly identified currency notes Ex.P1 to P40 as the same which were recovered from the accused. He also denied the suggestion of learned defence counsel that nothing was demanded, accepted or recovered from the accused in his presence. He maintained that he and one CBI official counted and compared the recovered notes with the numbers already noted in annexure A of Ex.PW2/A. This small discrepancy can be due to oversight or human error.

16. With regard to the discrepancies, it may be stated that it is trite law that small contradictions or discrepancies by themselves are no reason to throw the case out. It has been held time and again by catena of judgments of Apex Court that discrepancies do not necessarily demolish the testimony. The proof of guilt can be sustained despite some infirmities [***Narottam Singh*** *v.* ***State****,* 1978 Crl.L. J. 1612 (SC)]. Further no undue importance can be attached to such discrepancy if they do not go to the root of the matter and do not shake the basic version of the witness (***Lallan*** *v.* ***State***, 1990 Crl.L. J. 463). In the case of ***Ramni*** v. ***State***, 1999 (6) SC 247, it was held that all the discrepancies are not capable of affecting the credibility of the witnesses and similarly all the inconsistent statements are not sufficient to impair the credit of a witness.

17. Learned counsel next submitted that neither the recovered notes were sent to CFSL nor the phenolphthalein treated notes were sealed after recovery and also that neither the shirt of the complainant was seized nor his hand wash was taken and all these infirmities create doubt in the prosecution case. With regard to the non-seizure of the shirt of the complainant and not taking of his hand wash, it may only be stated that the same was not at all required by the prosecution. What was required to be

proved was the demand and acceptance and recovery of the tainted money from the accused. In fact the case of the prosecution is that the tainted money was with the complainant PW3 and if that was so, what was the necessity of going for hand wash procedure of PW3 or that of seizure of his shirt which he was wearing. With regard to the plea regarding non sending of the recovered notes to CFSL and non sealing of the phenolphthalein treatment solution, it may be stated that PW2, PW3, PW6, PW5 and PW7 have deposed about the proceedings of the accused having been apprehended. PW7 specifically testified that the solution of sodium carbonate was prepared and wash of the left hand fingers of the accused was taken which turned pink. He stated that wash was transferred into a glass bottle, which was sealed with the seal of CBI. He proved the wash bottle (Ex.PW41) and the cloth wrapper as Ex.PW42.

18. PW9, who was the Assistant Director of DDA and had arrived at the time of apprehension, also confirmed the proceedings relating to hand wash taken in his presence. All the witnesses present there have spoken about the recovery memo (Ex.PW2/C) prepared at the site and signed by each of them. There is nothing in the cross-examination of any of these witnesses to raise any doubt about the aforesaid proceedings.

19. PW4, K.S. Chhabra, Senior Scientific Officer, had analysed the contents of the sealed bottle vide report Ex.PW4/A. He stated that the contents of the bottle gave positive results of presence of phenolphthalein and sodium carbonate. The testimony of this witness remained unchallenged. When the phenolphthalein treated wash was taken into possession and was sent for analysis and confirmed the presence of Phenolphthalein, all this substantiated that the accused contacted the tainted notes with his hand of which wash was taken. There was no requirement or need for taking into possession the tainted notes by the I.O.

20. It was lastly submitted by the learned counsel that no independent witness was joined by CBI whereas there were several available in the office of the accused and also in the hall where the appellant was allegedly caught receiving the money. Learned counsel in this regard relied upon the judgments of ***Som Parkash*** *v.* ***State of Punjab***, 1992 CRl. L.J. 490; ***Ved Prakash*** *v.* ***State of H.P.***, II (1998) CCR 317; ***G.V. Nanjundiah*** *v.* ***State (Delhi Administration)***, 1988 Crl.L.J. 152; ***Gulam Mahmood A. Malek*** v. ***The State of Gujarat***, AIR 1982 SC 1558 and ***Satbir Singh*** *v.* ***State of Haryana***, 2000 (1) C.C. Cases HC 195.

21. There is no dispute with regard to the proposition regarding desirability of association of independent witnesses by the police so as to lend more credence and authenticity to the case, but there is also no dispute that non-association of the independent witnesses *per se* for any reason whatsoever was in itself not enough to discard the prosecution witnesses or throw away the case as a whole. In the present case, CBI associated two independent witnesses on the written requisition made to the office of NDMC. Since the prosecution/CBI already had two independent witnesses, who had been informed and apprised about the technicalities involved in the procedure during the trap proceedings, it was not necessary for the IO to have joined other public witnesses at the time of apprehension. May be to avoid the risk of such a raw public person getting won over or being unable to understand the proceedings at the last moment of raid, that the IOs usually avoid associating public witnesses at that stage in such type of cases.

22. In the case of ***Som Prakash*** *(supra)*, there was no independent witnesses associated and so that case was entirely distinguishable from the present case. Similarly, the case of ***Ved Prakash*** *(supra)* is also distinguishable. In that case the

independent witness who was associated was the one who was brought by the complainant and was already in contact with him and therefore, was not regarded as independent. In the case of ***Gulam Mahmood A. Malek*** *(supra)*, the testimony of the complainant was not reliable inasmuch as he himself was an accused in four cases and though the independent witness was available, none was joined. The case of ***G.V. Nanjudiah*** (*supra*) was also on its peculiar facts where the testimony of the complainant contractor was also found to be not trustworthy and there was no evidence establishing the factum of acceptance of bribe. Similarly, in the case of ***Satbir Singh*** *(supra)* also there was no proof of initial demand of illegal gratification beyond reasonable shadow of doubt and there was no other evidence to corroborate the statement of the complainant, that the failure to join the independent witnesses was held to be an infirmity in the prosecution case.

23. There is ample evidence on record to prove the factum of demand, acceptance and recovery by the accused. PW3 deposed the fact that he along with PW6 and PW2 went to the office of the accused where he met him for some time. He wished the accused and also informed him that the allottee had come. He also requested him to obtain allottee's signatures

wherever required. The accused enquired if he had brought the money (*RUPAYE LAYE HO)*, to which he replied stating, yes I have brought (*HA JI LAY*A *HUN*). On this accused took out the file related to the flat and obtained the signatures of PW6 at three places in the file and asked them to go downstairs. He along with PW2 and PW6 came downstairs and waited for the accused who came after few minutes and after telling him that his work would be done, demanded the money in this form of conversation "*AB AAPKA KAM HO JAYEGA KYON KI AJIT KUMAR SHARMA NE FILE PAR SIGN KAR DIYE HAIN, LAO RUPAYE DO".* On this he took the tainted money from his pocket and passed it to the accused which was taken by him in his left hand. At this stage, shadow witness gave the signal upon which the trap party rushed and apprehended the accused. PW6 also confirmed entire aforesaid sequence narrated by PW3. Likewise, PW2 also corroborated the statement of PW3 in its entirety with regard to the demand and acceptance. PW5 has also equally corroborated the statement of PW2 with regard to the acceptance and recovery of tainted money from the accused. PW7 also fully corroborated PW2 and PW3 with regard to the recovery and apprehension proceedings.

24. PW7 stated that it was on his asking that PW5 recovered the money from the accused and that same was checked. The

numbers of notes were found to be tallying with those as noted earlier in the handing over memo (Ex.PW2/B). To the same effect is the statement of PW5. In fact PW9, Assistant Director of the Department of accused who arrived at the ground floor was also a witness to the proceedings of recovery and also signatory of the recovery memo (Ex.PW2/E) prepared at the site.

25. Section 20 of the Act provides that where at the trial it is proved that an accused has accepted or obtained or agreed to accept or attempted to obtain any gratification (other than legal remuneration), it shall be presumed unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain such gratification as a motive or reward as mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate. The requirement of this Section is only that it must be proved that the accused has accepted or obtained or agreed to accept or attempted to obtain gratification. It may be proved by direct evidence as in the present case it has been proved from the direct evidence of testimonies of PW-4 and PW-5 that the gratification was accepted as a motive or reward for helping the complainant in the criminal case pending against him and other co-accused persons. In the case of ***Madhukar***

Bhaskarrao Joshi v. State of Maharashtra (2000) 8 SCC p. 571, the Apex Court held as under:-

> "**12.** The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing." If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

26. In the case of ***C.M. Girish Babu v. CBI, Cochin, High Court of Kerala*** (2009) 3 SCC 779, it was held as under:-

> "21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification."

27. Though, the burden of proof on the accused to rebut the presumption under Section 20 is not akin to that of the burden placed on the prosecution to prove the case beyond reasonable doubt, but the same, in any case, was required to be discharged at least by preponderance of probability. The accused did not lead any evidence in defence and also could not elicit anything from the cross-examination of prosecution witnesses and thus could not rebut the presumption of guilt under Section 7 against him. Insofar as Section 13(1)(d) is concerned, it stand proved that accused demanded and accepted bribe money for doing of favour in the exercise of his official function.

28. From the above discussion, it comes to be that the prosecution established its case beyond any reasonable doubt and defence could not point out any reason to interfere or find fault with the impugned judgment and order of the learned Special Judge. I, therefore, maintain the conviction of the accused and dismiss the appeal of the accused/appellant. With regard to the quantum of sentence, the learned defence counsel prayed for a lenient view stating that the accused has a large number of social and family responsibilities and is without job for the last so many years and also that he has already suffered a lot due to long protracted trial

of about 11 years. With regard to the mitigating circumstances, as pointed by the learned counsel for the defence, it may be stated that none of these can be made available to the accused keeping in view the fact that corruption amongst public servants has become a menace to the society. It is experienced that every case would have one or the other such circumstance. The pendency of the case for a long period of nearly 11 years was equally no ground. It was held by the Hon'ble Supreme Court in the case of ***State of A.P.*** *v.* ***V. Vasudeva Rao****,* (2004) 9 SCC 319, THAT the protracted trial is no ground to mitigate the gravity of offence. However, in the said case, keeping in view the age of the accused, the sentence was reduced to the minimum of one year.

29. Keeping in view the nature of the offence as committed by the accused, I am of the view that ends of justice would be met in imposing rigorous imprisonment of 1½ years on each count. Accordingly, while maintaining the conviction under Sections 7 & 13(2) of the Act, the impugned order of sentence is modified. The accused shall stand sentenced to one-and-a-half years' rigorous imprisonment each under Section (7) and 13(2) of the Act. Rest of the order of the learned Special Judge regarding fine and imprisonment in default shall remain as before. The

substantial sentences shall run concurrently. The period of imprisonment having already undergone by the convict shall be set off. The accused/convict shall be taken into custody to undergo imprisonment as awarded. The appeal is disposed of accordingly.

M.L.MEHTA
(JUDGE)

MAY 24, 2011
'Dev'