Satvir Singh vs State Of Delhi Tr.C.B.I on 20 August, 2014

Equivalent citations: AIR 2014 SUPREME COURT 3798, 2014 (13) SCC 143, 2014 AIR SCW 4924, AIR 2014 SC (CRIMINAL) 1987, 2014 (6) ADR 113, 2014 (9) SCALE 528, (2015) 1 RAJ LW 453, (2014) 4 ALLCRILR 559, (2014) 4 KCCR 488, (2014) 4 JLJR 412, (2014) 144 ALLINDCAS 249 (SC), (2014) 3 CRIMES 420, (2014) 59 OCR 449, (2014) 4 RECCRIR 40, (2014) 3 CURCRIR 644, (2014) 9 SCALE 528, (2015) 1 ALD(CRL) 48

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Bench: Dipak Misra, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.920 of 2011

SATVIR SINGH ….APPELLANT

VS.

STATE OF DELHI THROUGH CBI. …..RESPONDENT

J U D G M E N T

V.GOPALA GOWDA, J.

This appeal is filed by the appellant against the judgment dated 07.01.2011 and order on sentence dated 08.03.2011 passed in Criminal Appeal No.337 of 1999 by the High Court of Delhi, whereby the High Court reversed the order of acquittal dated 11.03.1999 recorded by the Trial Court in C.C No. 19 of 1993 and convicted the appellant for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') with rigorous imprisonment for one year and a fine of Rs.50,000/-, in default of payment of fine, to further undergo three months simple imprisonment. The appellant has prayed for allowing the appeal by setting aside the impugned judgment of the High Court and to acquit him from the charge urging various facts and grounds in support of the questions of law framed in this appeal.

2. For the purpose of considering the rival legal contentions urged by the learned counsel for the parties and with a view to find out whether this Court is required to interfere with the impugned judgment and order of conviction and sentence of the High Court, the necessary facts are briefly stated hereunder:

> The complainant, Ramesh Suri (PW-2), was running a business of import and export of buttons, zips, etc. in the name and style of M/s Erica Enterprises. It is alleged that the appellant along with his colleague P.S.Saini (both Inspector Customs (Preventive)) visited the office cum godown of the complainant (PW2) on 4.07.1989 and that P.S.Saini demanded a bribe of Rs.2 lakhs from the complainant, one lakh each for himself and the accused as the articles kept in the godown were notified goods and since his firm was not a notified dealer, the complainant has violated the provisions of Customs Act, 1962.

3. Further, on 07.07.1989, it is alleged by the prosecution that the appellant telephonically contacted the complainant (PW-2) and reiterated the demand as made by P.S.Saini. During the time of telephonic conversation, the brother-in-law of the complainant Ram Malhotra was sitting with him. The complainant said only an amount Rs.60,000/- could be arranged by him and the same was delivered at the residence of the appellant on 08.07.1989 at 8.00 a.m. as the rest of the amount would be arranged within 3-4 days and will be paid to the appellant.

4. It is alleged that on the written complaint lodged in the CBI office and on the directions of the Deputy Superintendent of Police a raid was conducted in the house of the appellant with the help of the complainant and a shadow witness (PW-3), the appellant was arrested on 8.7.1989. The charge sheet was filed by the prosecution under Section 173 Cr.P.C. before the court of Special Judge on the basis of which it has framed the charges against the appellant for trial for offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Act.

5. The Trial Court after evaluating the evidence on record has come to the conclusion and held that the prosecution had failed to prove the guilt of the accused under Sections 7 and 13(2) read with Section 13(1) (d) of the Act and recorded the acquittal of the appellant from the charges vide its judgment and order dated 11.03.1999.

6. The respondent-prosecution, aggrieved by the judgment and order of the Trial Court has filed an appeal before the High Court of Delhi urging various grounds. After hearing the learned counsel for the parties, the High Court vide its judgment and order dated 07.01.2011 reversed the order of acquittal recorded by the Trial Court and convicted the appellant for the offence punishable under Section 7 of the Act. The correctness of the same is challenged in this appeal by the appellant by raising certain legal questions and urging grounds in support of the same.

7. It is contended by Mr. Altaf Ahmed, the learned senior counsel appearing on behalf of the appellant that P.S. Saini on all the occasions demanded the bribe money from the complainant but he was neither arrayed as accused nor examined as witness by the prosecution in the case. Further, he submits that recovery memo Exh. PW-2/D is not proved because neither its author Deputy

Superintendent of Police, Darshan Singh was available nor the signatures of the other witnesses on the said memo have been proved. Therefore, recovery of money from the appellant alleged to have been paid to him by the complainant-PW-2 is not proved by the prosecution. It is urged by him that the further lacuna in the prosecution case is that Ram Malhotra, the Brother-in-law of the complainant, who was stated to be present at the time of the telephonic demand made by the accused with the complainant was examined by the prosecution. The prosecution could neither prove the demand and acceptance of the gratification by the appellant nor were they able to prove conscious possession of the black rexine bag containing the GC notes with him. Therefore, the alleged recovery of money cannot be stated to be "acceptance" of illegal gratification by the appellant as alleged by the prosecution.

8. It has been further submitted by the learned senior counsel for the appellant that the appellate court in exercise of its appellate jurisdiction has erroneously re-appreciated the evidence produced by the prosecution and has set aside the valid finding of fact recorded by the learned trial judge on the charges framed against the appellant. Therefore, the finding recorded on this aspect of the matter in the impugned judgment by the appellate court is not only erroneous on facts but in law, therefore, the same is liable to be set aside. Further, it is contended by him that the learned appellate judge has not noticed a very important lacuna in the prosecution case that as per the evidence of PW-2 and PW-3 Rameshwar Nath, the bribe money which was sought to be given to the accused on 08.07.1989 in a black rexine bag and not in the brown bag as shown to the prosecution witnesses by the learned counsel for the prosecution.

9. He has further urged that the Appellate Court can exercise its jurisdiction in exceptional circumstances where there are compelling circumstances and the judgment under appeal is found to be perverse. In support of the aforesaid legal submission he placed reliance upon the decision of this Court in the case of Babu v. State of Kerala,[1] wherein it has been categorically held that:

> "In exceptional cases where there are compelling circumstances and the judgment under the appeal is found to be perverse, the appellate court can interfere with 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 innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference" (Para 19).
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> The presumption of innocence of the appellant is further strengthened by the order of acquittal recorded by the trial judge on proper appreciation of evidence on record. He had the occasion to examine the demeanor of the prosecution witnesses. The Trial Court came to the right conclusion on facts and evidence on record and it has recorded a finding of fact holding that the accused is innocent of the charges leveled against him and consequently acquitted him from the said charges. It is further submitted by the learned senior counsel that the Appellate Court could only interfere in rare cases where it is found that the order of acquittal is erroneous or error in law. Therefore, he submits that the High Court should not have interfered with the judgment and order of the Trial Court. The learned senior counsel for the appellant

has further placed reliance on the following judgments of this Court, namely, 1) State of Kerala & Anr. v. C.P. Rao[2], 2) Murugesan & Ors. v. State through Inspector of Police[3] in support of his submission that the High Court has exceeded its parameters laid down by this Court in reversing the judgment and order of acquittal of the accused. The relevant paragraphs from the above judgments are extracted in the answering portion of the contentious points.

10. The learned senior counsel further submits that 'presumption' of offence committed by the appellant under Section 20 of the Act can be invoked against him by the prosecution, only if the prosecution successfully proves the foundational facts. In the case in hand, since the demand, acceptance of bribe money and recovery of the same from him has not been proved by the prosecution, the statutory presumption under Section 20 of the Act against the guilt of the accused does not arise and therefore rebuttal of such presumption by the appellant also did not arise in this case.

11. The other legal contention urged by the learned senior counsel is that mere recovery of the alleged tainted money without there being any demand and acceptance by the appellant from the complainant does not prove the guilt of the appellant. In support of his aforesaid legal submission, he has placed reliance upon the following decisions of this Court: (1) K.S. Panduranga Vs. State of Karnataka[4] (2)Subash Parbat Sonvane Vs. State of Gujarat[5] and (3)Mukut Bihari & Anr. Vs. State of Rajasthan[6].

In Mukut Bihari & Anr., this Court has held thus:

> "11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the 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 bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. 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 as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for [pic]independent corroboration before convicting the accused person."

12. The learned senior counsel for the appellant has further contended that mere recovery by itself cannot prove the charge against the accused and placed reliance upon the decision of this Court in C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala[7]. The relevant paragraph is extracted in the reasoning portion.

13. In view of the aforesaid legal contentions urged by the learned senior counsel he has prayed this Court to set aside the impugned judgment and order of the High Court and restore the trial court judgment and order by allowing this appeal.

14. On the other hand, the learned counsel for the respondent Dr. Ashok Dhamija has strongly relied upon the version of PW-3, who is an independent witness and sought to justify the impugned judgment and order as the High Court has rightly reversed the judgment and order of acquittal passed by the Trial Court. It has been urged by the learned counsel for the respondent that even though the complainant-PW2 has turned hostile in the case he has admitted his version in the cross-examination and corroborated the evidence of PW-3.

15. Further, the learned counsel for the respondent has contended that the complainant, PW-2 called PW-3 inside the residence of the accused introducing him as his uncle. When PW-3 went inside, the appellant enquired with the complainant if he had brought the money. PW-2, thereafter asked if there was anything to worry about and whether his work would be done. PW-2 handed over the handbag containing the notes towards gratification to the accused who touched the notes with his right hand and placed the hand bag containing the money on the cot made up of steel. Thus, the demand and acceptance of gratification by the appellant from the complainant is duly proved by the witness-PW3.

16. Further, he has contended that the testimony of PW-3 is corroborated by the testimony of PW-4 R.S.Manku, the Deputy Superintendent of Police who had conducted the trap and also PW-8 A.S.Chhabra, the Senior Scientific Officer who gave the report that the right–hand wash solution of the appellant gave positive test for Phenolphthelin and sodium. Therefore, the fact that the money was demanded and given to the appellant for illegal gratification, which fact is further corroborated by another fact that money was withdrawn from the bank account of PW-2 who has clearly deposed about it before the court in his evidence.

17. The High Court has concluded on the material evidence on record and held that the reasons of the Trial Court on the charge against the appellant is erroneous; stating that, at the time of demand, normally nobody else, except the complainant-PW2 would be present. Therefore, rejecting his testimony by the Trial Court for want of corroboration of his evidence by recording the findings of fact by him stating that it was unsafe to rely on the sole testimony of the complainant-PW-2, to convict the appellant would be contrary to the settled principles of appreciation of evidence on record.

18. Further, the findings of the trial court that there was no motive for the appellant to demand the gratification from the complainant as Sudan, the Custom (Supdt.) had satisfied himself that the complainant had valid documents in support of his claim and that he was not a notified dealer is

also perverse as the complainant, PW-2 in his testimony has clearly stated that the money was given to the appellant so that no harassment would be caused to him in his business in future.

19. It has been further held by the High Court that the Trial Court has also failed to apply the settled legal principles of law laid down by this Court. The Trial Court has erred in not accepting the testimony of a hostile witness-PW2, his evidence cannot be treated as effaced or washed off the record altogether; part of his evidence which is otherwise acceptable could have been acted upon at the time of recording his findings on the charges.

20. Further, it is urged by him that it has been further held by the High Court that since the illegal gratification is large, the same could not have been accepted by the appellant as cash-in-hand and the same was handed over to him by keeping in bags, suitcases, etc... which can never be recovered from the person of an accused.

21. The High Court further held that once demand and acceptance by the accused has been proved then the statutory presumption under Section 20 of the Act arises against him and the onus of proof shifts on him to rebut the presumption by adducing acceptable evidence to prove that he is not guilty of offence. In support of the aforesaid contention, the decision of this Court in the case of M. Narsinga Rao v. State of Andhra Pradesh,[8] was relied upon wherein it was held thus:

> "13. Before proceeding further, we may point out that the expressions "may presume" and "shall presume" are defined in Section 4 of the Evidence Act. The presumptions falling under the former category are compendiously known as "factual presumptions" or "discretionary presumptions" and those falling under the latter as "legal presumptions" or "compulsory [pic]presumptions". When the expression "shall be presumed" is employed in Section 20(1) of the Act it must have the same import of compulsion.
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> 14. When the sub-section deals with legal presumption it is to be understood as in terrorem i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act.
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> 15. The word "proof" need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the

> circumstances of the particular case, to act upon the supposition that it exists.

This is the definition given for the word "proved" in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in Hawkins v. Powells Tillery Steam Coal Co. Ltd. observed like this:

> "Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion."

> 16. The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business vis-à-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act.

> 17. Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it [pic]remains undisturbed later. Presumption in law of evidence is a rule indicating the stage of shifting the burden of proof.

From a certain fact or facts the court can draw an inference and that would remain until such inference is either disproved or dispelled.

18. For the purpose of reaching one conclusion the court can rely on a factual presumption. Unless the presumption is disproved or dispelled or rebutted, the court can treat the presumption as tantamounting to proof. However, as a caution of prudence we have to observe that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. This Court has indicated so in Suresh Budharmal Kalani v. State of Maharashtra. "A presumption can be drawn only from facts — and not from other presumptions — by a process of probable and logical reasoning."

22. The High Court further held that in view of the presumption as envisaged under Section 20 of the Act, it was the duty of the accused to have rebutted the same by producing cogent evidence on record. The accused has failed to discharge that onus. No doubt as held in the case of Subash Parbat (supra); "The Statutory presumption cannot be raised for an offence u/s 13(1) (d) of the Act."

However, for an offence under section 7 of the Act this presumption would arise.

23. On the basis of the aforesaid rival legal contentions urged on behalf of the parties, the following points would arise for consideration of this Court.

> 1) Whether the demand, acceptance and recovery of gratification are proved by the prosecution and whether the presumption of offence alleged to have been committed by the appellant would arise in this case?
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> 2) Whether the findings and reasons recorded on the charges by the High Court in reversing the findings of acquittal recorded by the Trial Court are based on proper re-appreciation of legal evidence on record and within the legal parameters laid down by this Court in its decisions?
>
> 3) What order?

24. The point Nos. 1 and 2 are inter-related and therefore, the same are answered together by assigning the following reasons:

> The learned senior counsel on behalf of the appellant has rightly placed reliance upon the evidence elicited in the cross examination of PW-2 by the prosecutor. The relevant portion from translation of deposition of PW-2 made by appellant is extracted hereunder:
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> "One P.S.Saini from the customs department asked me to pay Rs. 2 lakhs and at that time the appellant/accused Satvir Singh was checking the goods in the godown. On the same day, at about 4.00 p.m. they took me to Customs House at C.R. Building, and produced me before Shri Sudan, Custom (Suptd.) who checked my papers. Thereafter, I was advised to keep cordial relations with his subordinates. Thereafter, when I came out of the office of the superintendent, the accused Satvir Singh was standing outside the office with P.S. Saini who again demanded money from me. I refused to pay the same. On 7th July, 1989, I received a telephone call from the accused Satvir Singh. At about 5-6 p.m. the accused told me over the telephone, either to make the payment or otherwise they would seize the goods from my premises. The accused further asked me to make the payment at Gagan Vihar residence. The accused asked me to pay Rs.60,000/- first on 8.7.1989 at 8.00 a.m. as I could not arrange the entire amount.

The accused further asked to make the payment of the remaining balance amount within three-four days. My brother in law, Shri Ram Malhotra was sitting with me at the time of the telephonic conversation."

25. During the cross-examination of PW-2, he has stated that the demand of Rs.2 lakhs was made by P.S. Saini on 4.7.1989 at his godown between 11.30 to 12.30 p.m. On the very same day, he was

taken to office of Customs department where Saini demanded the money at two places i.e. firstly just outside the office of Superintendent and secondly, at the staircase of the office building and on both the occasions, the accused had not demanded the money from the complainant, PW-2 at any time. It has been further stated by him during his cross-examination that on both the occasions, the accused was at a distance of three-four feet. It has been further stated by him that he did not have any direct talk with the accused either at the C.R. Building or at his godown. He has further stated that he had met the accused only once, so he had neither conversant with the voice of the accused nor knows his style of talking.

26. It has been further stated by PW-2 in his evidence that, when he had gone to the house of the accused along with the punch witness, during the entire conversation, there was no talk about the contents of the rexine bag which he was carrying and neither did the accused enquire about the money nor received the same from the complainant.

27. Further, the learned senior counsel for the appellant has rightly placed reliance upon the questions put to the appellant by the Court seeking the explanation from him under Section 313, CrPC which reads thus:

> "Question: It is further in evidence against you that while you were checking the goods on the same day, Mr. P.S. Saini of the Customs Department demanded a bribe of Rs. 2 lakhs from the complainant, one lakh each for himself and the accused failing which he threatened the seizure of the said goods. What have you to say?
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> Ans: It is incorrect. No Customs officer demanded any money in my presence." A reading of the question framed by the learned trial Judge for seeking explanation from the appellant, would certainly go to show that he has not demanded illegal gratification from the complainant.

28. The learned senior counsel on behalf of the appellant has further rightly placed reliance upon the letter written by PW-2 Exh. PW-1/DA dated 15.11.1989 to the Collector of Customs, which reads thus:

> "In this connection, it is submitted that as written earlier Shri Satvir Singh, Inspector has never demanded any money on 4.7.1989 when they visited my premises. As far as telephone of 7.7.1989 is concerned, someone telephoned me in the name of Satvir Singh, but I could not recognize his voice as I have met Satvir Singh only once and that on 4.7.1989. However, when I visited his house on 8.7.1989, Satvir Singh did not demand any money nor accepted the same. This is for your information please." In this regard, the relevant portion of the evidence of Shri AGL Kaul, PW-

9, Inspector, CBI, is extracted hereunder:

> "During the course of investigation conducted by him, he came across the letter Exh. PW-1/DAwhich was already in the investigation file. He further stated that he cannot

> tell whether or not this letter was referred by the Customs Department to the CBI for verification because the letter was neither received nor seized by him. He recorded the statements of Chamanlal Marwaha and Shri Sharwan Kumar Marwaha during the investigation and after recording their statements under Section 161 Cr.P.C., the said witnesses stated that they were told by the complainant that he has got the accused falsely implicated in this case. After consulting the crime file, witnesses have stated that it is correct that initially this case was recommended for being sent for departmental action and not for criminal prosecution. This recommendation was made after obtaining legal opinion." (emphasis supplied)
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> 29. It is clear from the contents of the aforesaid documentary evidence on record upon which appellant has rightly placed strong reliance that he is innocent is evident from the version of the investigating officer PW-9, who had examined those witnesses at the time of the investigation of the case.

They have stated that initially this case was recommended for being sent for departmental action and not for criminal prosecution against the appellant. The said evidence would clearly go to show that there is no case of illegal gratification either demanded by him or paid to him by the complainant PW-2. This important aspect of the matter has been over-looked by the High Court at the time of exercising its appellate jurisdiction for setting aside the order of acquittal passed in favour of the appellant. In fact, the Trial Court on proper appreciation of both oral and documentary evidence particularly the contents of the said letter-Ex.PW-1/DA as admitted by PW-9 was considered by him and come to the right conclusion to hold that the appellant is not guilty of the offence and rightly passed the order of acquittal which has been erroneously reversed by the High Court as the same is contrary to the laws laid down by this Court in the cases referred to supra which relevant paragraphs are extracted while adverting to the submissions of the learned senior counsel for the appellant.

Therefore, this Court has to hold that the High Court has exceeded its jurisdiction by not adhering to the legal principles laid down by this Court in reversing the judgment and order of the Trial Court in exercise of its appellate jurisdiction.

30. Further, the learned senior counsel for the appellant has relied upon the statement of PW-3 who in his testimony has stated thus:

> "He along with the complainant left the CBI office at 7.35 a.m. and reached the residence of the accused at 8.00 a.m. The government vehicle was parked at a distance and he was instructed to remain sitting in the car of the complainant while the complainant would go to the residence of the accused in order to find out if the accused is available or not. The other members of the raiding party took their positions here and there at a distance. The complainant came back after an hour and asked him to accompany him. They both entered the residence of the accused. The complainant was carrying the bag containing the money." [Extracted from the translation made by the appellant] It is also an undisputed fact that neither Inspector

> P.S. Saini was arrayed as a witness nor accused by the Investigating Officer. Ram Malhotra, the brother-in-law of the complainant-PW2 who was stated to be present at the time of the telephonic conversation with him was also not examined during the investigation to prove the fact that the appellant had telephonic conversation with him.

31. The learned counsel for the prosecution has also relied upon the case of C.K. Damodaran Nair Vs. Government of India[9] in support of presumption of offence alleged against the appellant which reads thus:

> "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 consideration which he knows to be inadequate."

32. This Court, in K.S. Panduranga's case (supra) has held that the demand and acceptance of the amount of illegal gratification by he accused is a condition precedent to constitute an offence, the relevant paragraph in this regard from the above-said decision is extracted hereunder:

> "39. Keeping in view that the demand and acceptance of the amount as illegal gratification is a condition precedent for constituting an offence under the Act, it is to be noted that there is a statutory presumption under Section 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted other than for the motive or the reward as stipulated under Section 7 of the Act. [pic]When some explanation is offered, the court is obliged to consider the explanation under Section 20 of the Act and the consideration of the explanation has to be on the touchstone of preponderance of probability. It is not to be proven beyond all reasonable doubt. In the case at hand, we are disposed to think that the explanation offered by the accused does not deserve any acceptance and, accordingly, we find that the finding recorded on that score by the learned trial Judge and the stamp of approval given to the same by the High Court cannot be faulted." (emphasis supplied)

33. The learned senior counsel for the appellant has also placed reliance upon the case of Banarsi Das referred to supra wherein it was held that:

> "24. In M.K. Harshan v. State of Kerala this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as

under:

> "8. ... It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and [pic]secondly, there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification." The above-said paragraph from the above mentioned case would go to show that the divergent findings recorded by the High Court on the factum of demand and acceptance of illegal gratification by the appellant is not proved in this case. In the said case this Court in unequivocal terms has held that mere demand by itself is not sufficient to establish the offence under the Act. The other aspect, namely acceptance is also very important. There must be clinching evidence with the tacit approval of the accused that money was put by PW-2 on the steel cot as stated by him in his evidence as illegal gratification. In the case in hand, as per the evidence of PW-2 and PW-3, the illegal gratification was in a black rexine bag with a broken zip which was put on a steel cot. As the contents of the bag were not within the knowledge of the accused, therefore, the relevant aspect of the case that the appellant has accepted the illegal gratification as required under Section 7 of the Act is not proved by the prosecution by adducing cogent evidence in this regard.

34. We have examined the evidences on record as a whole, the said evidence is read along with documentary evidence of Exh.PW-1/DA, the contents of which are extracted above. The said document is written by PW-2 in the year 1989, therefore, reliance should be placed on the said evidence. The explanation which is sought to be elicited from the appellant by the prosecution to discard the said positive evidence in favour of the appellant would further support his plea that he has not demanded gratification from the complainant, PW-2. We are not at all impressed with the plea of the prosecution that the said letter was written by PW-2 under pressure as stated by him in his cross examination in the year 1993. If it is true that the letter was written by PW-2 under pressure, then he should have lodged the complaint in this regard with the jurisdictional police or to the higher officers at that relevant point of time or to the Trial Court when the case was pending. Therefore, the said portion of the evidence of PW-2 cannot be accepted by us as the same is untrustworthy. The black rexine bag containing the illegal gratification which was kept on the steel cot at the residence of the accused on 08.07.1989 was not recovered from the person of the accused. Therefore, neither acceptance nor recovery of illegal gratification from the appellant is proved. Further, the reliance placed upon the relevant paragraphs extracted above from the judgments of this Court by the learned senior counsel on behalf of the appellant applies aptly to the factual situation. Therefore, the demand, acceptance and recovery of the illegal gratification alleged to have been paid to the appellant is not proved by the prosecution. Thus, the Trial Court on overall appreciation of the oral and documentary evidence on record has come to the right conclusion and

recorded its findings of fact and held that the demand, acceptance and recovery of gratification from the appellant is not proved, therefore there is no presumption under Section 20 of the Act. The learned trial judge in his judgment has rightly held that presumption of innocence is in favour of the appellant and he was acquitted on merits.

35. The evidence of PW-3, who is an independent witness, who had participated in the proceedings of the raid at the appellant's house, the relevant portion of his deposition before the Trial Court is extracted hereunder:

> "The complainant went to the residence of the accused while I remained sitting in the car....Thereafter I along with the accused went inside the house of the accused.....The accused Satbir Singh inquired from the complainant if he had brought the money. He further enquired about me. Complainant introduced me as his uncle. The complainant told the accused that there was nothing to worry and that his work would be done.....The accused took the money. The complainant handed over the hand-bag containing the GC notes to the accused. The accused touched ten toes with his right hand and placed that hand bag containing the money on the cot made of steel.....The complainant told that the bag was containing Rs. 60,000/-.

36. The prosecution has placed reliance upon the judgment of this Court viz. State of Madras v. A Vaidhyanatha Iyer[10] in support of the prosecution to justify the findings and reasons recorded by the High Court on the charges leveled against the appellant, to reverse the acquittal and to convict and sentence him for the offence, the relevant portion from the above referred case reads thus:

> "13. ....Where it is proved that a gratification has been accepted, then the presumption shall at once arise under the section. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. It may here be mentioned that the legislature has chosen to use the words "shall presume" and not "may presume", the former a presumption of law and latter of fact. Both these phrases have been defined in the Indian Evidence Act, no doubt for the purpose of that Act, but Section 4 of the Prevention of Corruption Act is in pari materia with the Evidence Act because it deals with a branch of law of evidence e.g. presumptions, and therefore should have the same meaning. "Shall presume" has been defined in the Evidence Act as follows:
>
> Whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.
>
> It is a presumption of law and therefore it is obligatory on the court to raise this presumption in every case brought under Section 4 of the Prevention of Corruption Act because unlike the case of presumption of fact, presumptions of law constitute a branch of jurisprudence. While giving the finding quoted above the learned Judge seems to have disregarded the special rule of burden of proof under Section 4 and therefore his approach in this case has been on erroneous lines." It is rightly

> contended by the learned senior counsel on behalf of the appellant that the presumption of the guilt is not proved in the case on hand as the prosecution has failed to prove the ingredients of the provision of Section 7 of the Act, viz. demand and acceptance of illegal gratification by the appellant to constitute an offence alleged to have committed by him. Therefore, the reliance placed on the evidence of prosecution witnesses i.e. PW-2, PW-3 and others by the respondent's counsel, the relevant portion of which is extracted in the aforesaid portion of the judgment, does not amount to presumption of offence as provided under Section 20 of the Act. Therefore, the question of onus of proof to disprove the presumption did not arise at all on the part of the appellant.

37. The High Court in exercise of its appellate jurisdiction has exceeded its parameters laid down by this Court in reversing the acquittal order of the trial court. Therefore, the findings are not only erroneous in law but also vitiated in law. The relevant paragraphs from the judgment in State of Kerala v. C.P.Rao (supra) are extracted hereunder:

> "13. In coming to this conclusion, we are reminded of the well- settled principle that when the Court has to exercise its discretion in an appeal arising against an order of acquittal, the Court must remember that the innocence of the accused is further re-established by the judgment of acquittal rendered by the High Court. Against such decision of the High Court, the scope of interference by this Court in an order of acquittal has been very succinctly laid down by a three-Judge Bench of this Court in Sanwat Singh v. State of Rajasthan. At SCR p. 129, Subba Rao, J. (as His Lordship then was) culled out the principles as follows:
>
> "9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup case, afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) 'substantial and compelling reasons', (ii) 'good and sufficiently cogent reasons', and (iii) 'strong reasons', are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion;

but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified." Further, in the case of Murugesan,(supra) it is held as under:

> 19. An early but exhaustive consideration of the law in this regard is to be found in the decision of Sheo Swarup v. King Emperor wherein it was held that the power of the High Court extends to a review of the entire evidence on the basis of which the

order of acquittal had been passed by the trial court and thereafter to reach the necessary conclusion as to whether order of acquittal is required to be maintained or not. In the opinion of the Privy Council no limitation on the exercise of power of the High Court in this regard has been imposed by the Code though certain principles are required to be kept in mind by the High Court while exercising jurisdiction in an appeal against an order of acquittal. The following two passages from the report in Sheo Swarup adequately sum up the situation:

"There is, in their opinion, no foundation for the view, apparently supported by the judgments of some courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower court has 'obstinately blundered', or has 'through incompetence, stupidity or perversity' reached such 'distorted conclusions as to produce a positive miscarriage of justice,' or has in some other way so conducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result.

(emphasis supplied) Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

20. The principles of law laid down by the Privy Council in Sheo Swarup have been consistently followed by this Court in a series of subsequent pronouncements of which reference may be illustratively made to the following: Tulsiram Kanu v. State, Balbir Singh v. State of Punjab, M.G. Agarwal v. State of Maharashtra, Khedu Mohton v. State of Bihar, Sambasivan v. State of Kerala, Bhagwan Singh v. State of M.P. and State of Goa v. Sanjay Thakran.

21. A concise statement of the law on the issue that had emerged after over half a century of evolution since Sheo Swarup is to be found in para 42 of the Report in Chandrappa v. State of Karnataka. The same may, therefore, be usefully noticed below:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

[pic] (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court." (emphasis supplied)

22. Another significant aspect of the law in this regard which has to be noticed is that an appeal to this Court against an order of the High Court affirming or reversing the order of conviction recorded by the trial court is contingent on grant of leave by this Court under Article 136 of the Constitution. However, if an order of acquittal passed by the trial court is to be altered by the High Court to an order of conviction and the accused is to be sentenced to death or to undergo life imprisonment or imprisonment for more than 10 years, leave to appeal to this Court has been dispensed with and Section 379 of the Code of Criminal Procedure, 1973, provides a statutory right of appeal to the accused in such a case. The aforesaid distinction, therefore, has to be kept in mind and due notice must be had of the legislative intent to confer a special status to an appeal before this Court against an order of the High Court altering the acquittal made by the trial court. The issue had been dealt with by this Court in State of Rajasthan v. Abdul Mannan in the following terms, though in a different context: (SCC pp. 70-71, para 12) "12. As is evident from the above recorded findings, the

> judgment of conviction was converted to a judgment of acquittal by the High Court. Thus, the first and foremost question that we need to consider is in what circumstances this Court should interfere with the judgment of acquittal.

Against an order of acquittal, an appeal by the State is maintainable to this Court only with the leave of the court. On the contrary, if the judgment of acquittal passed by the trial court is set aside by the High Court, and the accused is sentenced to death, or life imprisonment or imprisonment for more than 10 years, then the right of appeal of the accused is treated as an absolute right subject to the provisions of Articles 134(1)(a) and 134(1)(b) of the Constitution of India and Section 379 of the Code of Criminal Procedure, 1973. In light of this, it is obvious that an appeal against acquittal is considered on slightly different parameters compared to an ordinary appeal preferred to this Court."

23. Having dealt with the principles of law that ought to be kept in mind while considering an appeal against an order of acquittal passed by the trial court, we may now proceed to examine the reasons recorded by the trial court for acquitting the accused in the present case and those that prevailed with the High Court in reversing the said conclusion and in convicting and sentencing the appellant-accused."

38. Further, as contended by the learned senior counsel for the appellant, the High Court has not noticed the very important lacuna in the prosecution case that as per the evidence of PW-2 and PW-3 Rameshwar Nath, the bribe money which was sought to be given to the accused on 08.07.1989 was in a black rexine bag and not in the brown rexine bag as shown to the witnesses before the trial court by the prosecution. It has further come to our notice that neither the two witnesses nor the C.B.I. officials put any signature or identification mark on the bottles containing solution which is the most crucial evidence in the case to prove the acceptance of the gratification by the appellant from the complainant. As per the statements of PW-2 and C.B.I. officials, the GC notes were not counted. However, it is a matter of serious doubt of acceptance the notes containing in the black rexine bag were touched by the accused.

The aforesaid findings and reasons recorded by the High Court are supported with the statements of law laid down by this Court in C.M. Girish Babu (supra) upon which the learned senior counsel on behalf of the appellant has rightly placed reliance. The relevant paragraph is extracted below:

> "18. In Suraj Mal v. State (Delhi Admn.) this Court took the view that mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe."

39. After careful observation of the above-mentioned facts and evidence on record and on careful examination of the aforesaid rival legal contentions urged on behalf of the parties, with reference to the extracted portion of the evidence of PW-2, PW-3 and PW-9, we are of the considered view that the prosecution has failed to prove the demand and acceptance of illegal gratification by the

appellant from the complainant PW-2, upon whose evidence much reliance has been placed by the learned counsel for the respondent.

40. We, accordingly answer the point No. 2 in favour of the appellant that exercise of appellate jurisdiction by the High Court to reverse the judgment and order of acquittal is not only erroneous but also suffers from error in law and liable to be set aside. Accordingly, we answer the point Nos. 1 and 2 in favour of the appellant.

Point No. 3.

41. We have answered the point Nos. 1 and 2 in favour of the appellant after adverting to the legal evidence and rival legal contentions urged on behalf of the parties. We have arrived at the aforesaid conclusions after accepting the well founded submissions made by the learned senior counsel on behalf of the appellant. In view of our findings and reasons on point Nos. 1 and 2, the submissions made by the learned counsel on behalf of the respondent are rejected as the same are wholly untenable in law.

For the foregoing reasons, we have to restore the judgment and order of acquittal of the trial court by setting aside the impugned judgment dated 07.01.2011 and order on sentence dated 08.03.2011 of the High Court of Delhi in Criminal Appeal No.337 of 1999.

42. Accordingly, the appeal is allowed. The appellant is on bail. The bail bonds shall stand discharged.

.....J. [DIPAK MISRA]

.....J. [V. GOPALA GOWDA]

New Delhi, August 20,2014

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[1] (2010) 9 SCC 189
[2] (2011) 6 SCC 450
[3] (2012) 10 SCC 383

[4] (2013) 3 SCC 721
[5](2002) 5 SCC 86

[6](2012) 11 SCC 642
[7] (2009) 3 SCC 779
[8] 2001 (1) SCC 691
[9] (1997) 9 SCC 477
[10] AIR 1958 SC 61