REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1669 OF 2009

MRS. NEERAJ DUTTA …Appellant

VERSUS

STATE (GOVT. OF NCT OF DELHI) …Respondent

J U D G M E N T

R. BANUMATHI, J.

This appeal arises out of the judgment dated 02.04.2009 passed by the High Court of Delhi in Criminal Appeal Nos.15 and 4 of 2007 in and by which the High Court affirmed the conviction of the appellant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and the sentence of imprisonment imposed upon her.

2. Complainant-Ravijit Singh Sethi received a phone call from the appellant who was working as LDC in Delhi Vidyut Board on 17.04.2000 at 07.30 am asking the

complainant to meet her at her house in connection with installation of electricity meter at his shop. When complainant met the appellant, she demanded bribe of Rs.15,000/- for installation of meter which was subsequently reduced to Rs.10,000/- after negotiation. The appellant agreed to receive the said amount between 03.00 PM-04.00 PM on the same day at the shop of the complainant. As the complainant was not willing to pay the bribe, he made a complaint (Ex.PW-5/A) before ACB, based on which, FIR was registered. Inspector O.D. Yadav (PW-6) organised the pre-raid proceedings. S.K. Awasthi (PW-5) accompanied the complainant and the complainant paid Rs.10,000/- to the appellant and she received the amount from the complainant and the same was transferred to the second accused-Yogesh Kumar/Driver. Upon receiving signal from PW-5/shadow witness, PW-6-Inspector along with raiding party arrived and recovered Rs.10,000/- from the second accused-Yogesh Kumar. Hands of both the appellant and accused No.2-Yogesh

Kumar turned pink, when they were put in the sodium bicarbonate solution. Upon completion of investigation, charge sheet was filed against the appellant and accused Yogesh Kumar under Sections 7 and 13(2) of Prevention of Corruption Act, 1988 (For short "The P.C. Act").

3. Since the complainant passed away before the trial, he could not be examined. PW-5-shadow witness was examined who supported the case of the prosecution. Based upon the evidence of PW-5 and recovery of money from the appellant, the trial court held that the demand and acceptance of illegal gratification has been established by the prosecution and convicted the appellant-accused No.1 under Section 7 and Section 13(1)(d) read with Section 13(2) of the P.C. Act and sentenced her to undergo imprisonment for two years and three years respectively and also imposed fine. The trial court also convicted accused No.2 under Section 12 of the P.C. Act for abetment of the offence. In appeal, the High Court

affirmed the conviction of the appellant and the sentence of imprisonment imposed upon her. The High Court acquitted the second accused of the charges levelled against him holding that there is no evidence to prove conspiracy or abetment. Being aggrieved, the appellant has preferred this appeal.

4. We have heard Mr. S. Guru Krishna Kumar, learned senior counsel appearing for the appellant and Ms. Kiran Suri, learned senior counsel appearing for the respondent-State.

5. Contention of the appellant is that mere proof of receipt of money by the accused in the absence of proof of demand of illegal gratification is not sufficient to prove the guilt of the accused. It was contended that when the complainant passed away, primary evidence of demand is not forthcoming and when the prosecution could not establish the demand by such primary evidence, the conviction of the appellant cannot be sustained.

6. In support of his contention, the learned senior counsel for the appellant placed reliance upon ***P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another*** (2015) 10 SCC 152. In the said case, the complainant died before the trial and thus could not be examined by the prosecution. Panch witness was examined as PW-1, which was the sheet anchor of the prosecution case. Observing that on the demise of the complainant, primary evidence of the demand is not forthcoming and inferential deduction of demand is impermissible in law, in paras (24) and (25), this Court held as under:-

> **"24.** The sheet anchor of the case of the prosecution is the evidence, in the facts and circumstances of the case, of PW 1 S. Udaya Bhaskar. ……. Though, a very spirited endeavour has been made by the learned counsel for the State to co-relate this statement of PW 1 S. Udaya Bhaskar to the attendant facts and circumstances including the recovery of this amount from the possession of the appellant by the trap team, identification of the currency notes used in the trap operation and also the chemical reaction of the sodium carbonate solution qua the appellant, <u>we are left unpersuaded to return a finding that the</u>

prosecution in the instant case has been able to prove the factum of demand beyond reasonable doubt. Even if the evidence of PW 1 S. Udaya Bhaskar is accepted on the face value, it falls short of the quality and decisiveness of the proof of demand of illegal gratification as enjoined by law to hold that the offence under Section 7 or Sections 13(1)(*d*)(*i*) and (*ii*) of the Act has been proved. True it is, that on the demise of the complainant, primary evidence, if any, of the demand is not forthcoming. According to the prosecution, the demand had in fact been made on 3-10-1996 by the appellant to the complainant and on his complaint, the trap was laid on the next date i.e. 4-10-1996. However, the testimony of PW 1 S. Udaya Bhaskar does not reproduce the demand allegedly made by the appellant to the complainant which can be construed to be one as contemplated in law to enter a finding that the offence under Section 7 or Sections 13(1)(*d*)(*i*) and (*ii*) of the Act against the appellant has been proved beyond reasonable doubt.

25. In our estimate, to hold on the basis of the evidence on record that the culpability of the appellant under Sections 7 and 13(1)(*d*)(*i*) and (*ii*) has been proved, would be an inferential deduction which is impermissible in law. Noticeably, the High Court had acquitted the appellant of the charge under Section 7 of the Act and the State had accepted the verdict and has not preferred any appeal against the same. The analysis undertaken as hereinabove qua Sections 7 and 13(1)(*d*)(*i*) and (*ii*) of the Act, thus, had been to

underscore the indispensability of the proof of demand of illegal gratification”.........**[Underlining added].**

In ***Satyanarayana***, the court proceeded under the footing that failure of the prosecution to prove the demand for illegal gratification due to the death of complainant would be fatal to the prosecution case and recovery of the amount from the accused would not entail his conviction.

7. Ms. Kiran Suri, learned senior counsel for the State submitted that in ***Satyanarayana***, the court did not notice the line of judgments and the consistent view taken by this Court in various decisions that demand can be proved either by direct evidence or by drawing inference from other evidence like evidence of panch witness and the circumstances.

8. The learned senior counsel has drawn our attention to number of judgments where accused was convicted even when the evidence of complainant was not available either due to death of complainant or where the complainant had turned hostile. In ***Kishan***

Chand Mangal v. State of Rajasthan (1982) 3 SCC 466, by the time of trial, the complainant Rajendra Dutt expired and he could not be examined. The Court relied upon evidence of two Motbir witnesses Ram Babu (PW-1) and Keshar Mal (PW-2), Dy. SP Mahavir Prasad (PW-7) and the factum of recovery of money from the accused and convicted the accused thereon. Affirming the conviction of the appellant/accused, this Court held that *".....the tell-tale circumstances which do indicate that there must have been a demand......and it is not proper to say that there is no evidence of demand of bribe as on November 20, 1974."*

9. In ***Hazari Lal v. State (Delhi Administration)*** (1980) 2 SCC 390, the complainant was declared hostile and the only other evidence was that of Inspector (PW-8) to whom the complainant made statement when he went to lodge the complaint and another witness who has supported the prosecution case only in some particulars. Based on the evidence of the Inspector who laid the trap and panch witness

and observing that it is not necessary that the passing of money should be proved by direct evidence, in para (10) of ***Hazari Lal***, the Supreme Court held as under:-

> **"10.** ......It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW 3. Under Section 114 of the Evidence Act the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to Section 114 of the Evidence Act is that the court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from PW 3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW 3, the presumption

> under Section 4(1) of the Prevention of Corruption Act is immediately attracted. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The accused was, therefore, rightly convicted by the courts below." **[Underlining added].**

10. In ***M. Narsinga Rao v. State of A.P.*** (2001) 1 SCC 691, both complainant-PW-1 and PW-2-panch witness have turned hostile. Appellant/accused thereon contended that the presumption under Section 20 of the Act could be drawn only when the prosecution succeeded in establishing the demand by adducing direct evidence that the delinquent public servant accepted or obtained gratification and that the same cannot depend on an inference for affording foundation for the legal presumption envisaged in Section 20 of the Act. Rejecting the said contention and considering the scope of the expression *"shall presume"* employed in Section 20(1) of the Act, it was held as under:-

> **"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.

…………

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 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.

……..

19. Illustration (*a*) to Section 114 of the Evidence Act says that the court may presume that "a man who is in the possession of stolen goods soon after the theft

> is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession". That illustration can profitably be used in the present context as well when prosecution brought reliable materials that the appellant's pocket contained phenolphthalein-smeared currency notes for Rs 500 when he was searched by PW-7 DSP of Anti-Corruption Bureau. That by itself may not or need not necessarily lead to a presumption that he accepted that amount from somebody else because there is a possibility of somebody else either stuffing those currency notes into his pocket or stealthily inserting the same therein. <u>But the other circumstances which have been proved in this case and those preceding and succeeding the searching out of the tainted currency notes, are relevant and useful to help the court to draw a factual presumption that the appellant had willingly received the currency notes.</u>" **[Underlining added].**

11. The direct or primary evidence of demand may not be available at least in three instances:- (i) where the complainant is dead and could not be examined; (ii) complainant turned hostile; and (iii) complainant could not be examined either due to non-availability or other reasons. Direct proof of demand may not be available in all the above instances but from the evidence of

panch witness, acceptance of money was proved by Phenolphthalein Test and by raising presumption under Section 20 of the Act, it is permissible to draw inference to prove the demand.

12. On behalf of the respondent, it was submitted that under Section 20 of the P.C. Act, the Court is bound to draw presumption mentioned therein and the presumption in question will hold good unless the accused proves the contrary. It was contended that the purpose of presumption under Section 20 of the Act is to relieve the prosecution from the burden of proving a fact and while so, insistence upon primary evidence for proving demand is not in consonance with the view taken by the Supreme Court in line of judgments.

13. The learned senior counsel for the respondent submitted that the court must take into consideration the facts and circumstances brought on record and may draw inference to arrive at the conclusion whether demand and acceptance of the illegal gratification has been proved or not. Insistence of direct proof or

primary evidence for proving the demand may not be in consonance with the view taken by this Court in number of judgments. The learned senior counsel has drawn our attention to other cases to substantiate her contention that ***Satyanarayana*** had not taken note of the consistent view taken by the Supreme Court. We are not delving into the controversy any further. We are of the opinion that the following issue requires consideration by the larger Bench:-

> "The question whether in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not permissible to draw inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution."

15. In the light of the consistent view taken by this Court in various judgments, we have some reservation in respect of the observation and findings recorded by this Court in ***P. Satyanarayana Murthy v. District***

Inspector of Police, State of Andhra Pradesh and another (2015) 10 SCC 152. The matter be placed before the Hon'ble Chief Justice for appropriate orders.

..................................J.
[R. BANUMATHI]

..J.
[R. SUBHASH REDDY]

New Delhi;
February 28, 2019