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IN THE COURT OF SPECIAL JUDGE, CBI (ACB), PUNE,
(Presided over by Pralhad C. Bhagure)

Special (CBI-ACB) Case No.27/2019

Exh. No.

CNR No.MHPU01-007514-2019

The Central Bureau of Investigation,
Anti Corruption Bureau, Pune.

... **Prosecution**

Versus

1. Shri. Sanjeeb Kumar Rajendra Sharma
age – 37 yrs., Occ. Then Superintendent
(In SITU) HPU-IV, CGST, Pune.
R/at – 102, Uttreshwar Nagar, Lane No.6,
Lohegaon, Pune – 411 047.
2. Shri Vivek Madhukar Dekate
age – 48 yrs., Occ. Then Superintendent
(In SITU) HPU-IV, CGST, Pune
R/at – L-1. 504, Hari Ganga,
Opp. R.T.O., Alandi Road,
Yerwada, Pune – 411 006.

... **Accused**

APPEARANCES :

- 1] Shri.Abhayraj Arikar, Public Prosecutor for the prosecution
- 2] Advocate Shri.S.K. Jain for accused no.1
- 3] Advocate Shri.Ayub Pathan for accused no.2

J U D G M E N T

(Delivered on 21st March, 2020)

1] Accused no.1 and 2 have been prosecuted for the offences punishable under section 7 of Prevention of Corruption **[Amendment]** Act, 2018 r/w section 120-B of Indian Penal Code

2] Brief facts of the case are as under -

Accused Sanjeebkumar and accused Vivek Dekate are Superintendent, CGST, Pune II, Commissionerate, Pune. At the relevant time, they were working under Assistant Commissioner Mr.Sachin Ghagare PW 7 in Head-quarter Preventive Unit. It is their job profile to carry out anti-evasion activities and prevent the tax evasion carried out by businessmen. They have to develop the intelligence and based on the intelligence they have to act and prevent tax evasion. They being officers working in Preventive Unit had access to the data of the assessee submitted in the office by using their log in ID and password.

Shri Bageshree Restaurant is situated near Khopoli, Khalapur, NH 4, New Pune Bombay High way. It is registered at CGST Pune Commissionerate, ICE House, Pune.. The wife of complainant Smt.Manik is partner in the said Restaurant. The complainant PW 3 was working as tax consultant in Shri Bageshree Restaurant. M/s R.J. Lahotia and company has submitted the returns for Shri Bageshree Restaurant for the financial year 2016-2017 and first quarter of financial year 2017-2018 and paid service tax. Shri. Shailesh PW 6 is the clerk of M/s R.J. Lahotia and company.

In October – November, 2018 Shri. Shailesh PW 6 clerk of M/s R.J. Lahotia and Company received message from accused no.1 Sanjeebkumar to meet him in the GST office. Mr. Shailesh met him. Accused no.1 Sanjeebkumar told to Shailesh that Shri Bageshree Restaurant has not paid full service tax for the financial year 2016-2017 and for the first quarter 2017-2018. Accordingly, he has calculated the service tax at approximately Rs.12 lacs including interest and penalty. Mr. Shailesh requested him that the service tax is paid properly and he requested to close the matter but Sanjeebkumar demanded a bribe of Rs.5 lacs and informed to him that he will tell to his Boss not to issue notice to the Restaurant. Mr. Shailesh met accused no.2 but he also told him that he shall pay the tax or to do as per instructions of accused no.1. Mr. Shailesh informed said fact to complainant who was looking after tax issue of Shri Bageshree Restaurant. Mr. Shailesh was in touch with accused persons and explained the tax is proper but they did not listen and given threat to issue the notice.

In February, 2019 complainant and Mr. Shailesh met accused no.2 at his office and enquired about the tax issue. At that time accused no.2 told them, they should pay the tax amount or see what else he can do. In March 2019 complainant and Mr. Shailesh met accused no.2 and asked the way out in respect of tax issue. At that time he told only way out is not to open the file and it will be overlooked. The complainant requested to accused no.2 that the accused no.1 has demanded huge amount of Rs.5 lacs. So then accused no.2 told him to pay him Rs.4 lacs instead of Rs.5 lacs. The complainant told it is also huge amount. Then accused

[4]

no.2 told to talk with accused no.1 Sanjeebkumar.

On 15/3/2019 complainant met Sanjeebkumar at a tea stall outside the GST office, opp. to Wadia College and discussed the issue wherein accused no.1 reduced the amount of Rs.3,50,000/- but on repeated request he reduced the amount up to Rs.3 lacs. It was decided that complainant should pay 50% amount before Holi and rest of later on and accused no.1 himself will inform the said fact to accused no.2.

On 19/3/2019 accused no.1 contacted the complainant from his mobile no. 7980552575 on complainant's mobile no. 9822013698 and asked him when he will come. He informed he will come on Monday. On 25/3/2019 at about 10.53 a.m. Sanjeebkumar again called him and asked to meet him. The complainant was not intended to pay the bribe, therefore, went to CBI-ACB Akurdi office and lodged the complaint. The complainant had provided pen-drive containing conversation held between him and accused no.1 and 2 time to time which was recorded in his mobile phone. The verification of demand has been conducted in presence of panchas directly with accused no.1 as well as through telephonic talk wherein accused no.1 asked the first instalment of bribe amount. The verification of demand was confirmed therefore it was decided to lay the trap and catch the accused while accepting bribe. Accordingly, complainant has produced 200 GC notes of Rs.500 denomination amounting to Rs.1 lac which was to be handed over to the accused no.1. Its serial number was noted down in the official laptop and its printout was taken and handed over to one independent panch. The demonstration of chemical reaction of

phenolphthalein powder and sodium carbonate was carried out in presence of panchas by members of CBI team at Railway officer's rest house, Pune. The phenolphthalein powder were applied on each GC note and thereafter it was put in the pant-pocket of the complainant with instructions he should not touch to those GC notes unless and until there is demand of amount by accused no.1. It was also decided once bribe amount is accepted in open premises, complainant should give signal by wiping his face with handkerchief and if bribe is accepted in car then he should on the parking light. The accused no.1 decided the place to accept the bribe amount at Gunjan theatre by telephonic talk with complainant. Said conversation was also recorded in SD card. Thereafter, complainant, pancha and Mr. Dhan Singh proceeded towards the Gunjan Theatre by car of complainant and rest of team members by Government vehicle. It was decided to avoid the suspicion there should not be shadow witness at the time of giving bribe but witness should remain there on such a position so he will watch the act of complainant and accused. Though Mr. Dhan Singh and Panch were in car but they have dropped themselves earlier before Gunjan Theatre by putting DVR in he shirt-pocket of complainant in operating mode. The accused no.1 met the complainant at Gunjan Theatre and after brief talk the accused no.1 proceeded ahead on his two-wheeler and complainant followed him with his car. The CBI team also followed them. After some distance there was one food stall to the road side where accused no.1 stopped his two-wheeler. The complainant also stopped his car and got down from the car. They were talking near food stall. Meanwhile accused no.2 came there with his car. Thereafter, complainant entered in his own car

and sat on the driver seat. Meanwhile accused no.1 also entered in the car of complainant and sat on the seat beside the driver seat. After some time CBI team saw parking lights of the car of complainant are blinking. Therefore, they all proceeded there, given their identity and caught both wrists of the accused no.1. The one of the witness asked about the bribe amount to the complainant. The complainant told the amount is accepted and it is in the pant-pocket of accused no.1. The bribe amount was recovered from pant-pocket of accused no.1. Its serial numbers were tallied with the print available with the witness. The hand-wash of accused no.1 was taken one after another in the solution of sodium carbonate. It was turned into pink. Samples were preserved in separate bottles. The accused no.2 was crossing the road. He was also arrested by CBI team. The conversation between the complainant and accused recorded time to time in the SD card through DVR. The verification panchanama, pre-trap panchanama and post-trap panchanama are prepared time to time in presence of panchas. The voice samples of accused are collected in presence of panchas. The transcription of conversation recorded during the trap proceeding and conversation submitted by the complainant have been prepared. The investigation officer conducted investigation. He sent hand-wash and pant-pocket wash taken in solution of sodium carbonate and voice samples recorded in SD card to concerned authorities for its examination and collected its reports. The Investigation Officer recorded the statement of witnesses, collected service details of accused. He sent the proposal for sanction to the concerned authority. The concern authority accorded sanction. The Investigation Officer found accused being public servants abused

their official position in pursuance of the conspiracy and accepted the first instalment of bribe from the complainant for settling service tax issue of Shri Bageshree Restaurant. Therefore, he filed the charge-sheet.

3] I have framed charge at exh.2 against accused under Section 7 of Prevention of Corruption Act, 1988 [as amended by the Prevention of Corruption (Amendment) Act, 2018 r/w 120B of Indian Penal Code. The charge was read over and explained to the accused persons in vernacular. They pleaded not guilty and claimed to be tried.

4] In order to prove its case the prosecution examined in all nine witnesses. In rebuttal no defence evidence.

5] The defence of accused appears from the cross-examination and statement under section 313 of Cr.P.C. that the complainant was directed to deposit the service tax properly by the accused persons therefore he annoyed and managed false trap against them.

6] Points for consideration and thereon my findings with reasons are as under -

	Points	Findings
1]	Whether both accused while working as public servants as Superintendent in CGST, Pune entered into criminal conspiracy in order to demand and accept illegal gratification from complainant for motive to settle the service tax matter of Shri Bageshree	Yes

	Restaurant for themselves as undue advantage and thereby agreed to do an illegal act by illegal means?	
2]	Whether both accused being public servants in pursuance of criminal conspiracy on 25/3/2019 demanded an illegal gratification other than legal remuneration and in pursuance of their demand obtained Rs.1,00,000/- from complainant for motive to settle the service tax matter of Shri Bageshree Restaurant?	Yes
3]	What order?	As per final order.

REASONS

AS TO POINT NO.1 AND 2 :

7] The learned PP Mr. Arikar urged that the evidence of complainant, TLO and panch discloses that accused no.1 being a part of conspiracy accepted bribe amount of Rs.1 lac from the complainant. He accepted amount under dishonest intention. Once acceptance of bribe is proved, it is for the Court to presume under section 20 of Prevention of Corruption Act that the public servant has accepted an undue advantage for performing improper duty either by himself or by another public servant. He further urged that the service tax was properly paid online by Shri Bageshree Restaurant but accused persons under conspiracy without any authorization called the complainant and demanded bribe for not issuing notice. The accused did not give any explanation about the amount recovered from them and their presence at the time of trap at the place of incidence. According to him, the evidence is fully

corroborated on record and there is no scope to say that accused persons are innocent. To support his argument he pressed into service following caselaws –

i] Madhukar Bhaskarrao Joshi Vs. State of Maharashtra in Criminal Appeal No.960 of 2000 wherein it is observed that “A trap was laid and tainted currency notes recovered from accused, there is legal compulsion to presume that gratification was paid and accepted as a motive or reward for official act.”

ii] Krishna Ram Vs. State of Rajasthan in Criminal Appeal No. 402 of 2001 wherein it is observed that once it is proved that the money was recovered from the possession of the appellant the burden of presumption as contemplated under Section 20 of the P.C. Act, 1988 shifts upon the appellant which he could not rebut through cross-examination of the prosecution witnesses or by adducing reliable and convincing evidence.

iii] Rajesh Vs. Central Bureau of Investigation, Nagpur in Cri. Appeal No. 380/2003 wherein it is observed that, it was not necessary for prosecution for proving offence punishable under Section 13(1)(d) read with 13(2) of 1988 Act, to prove that there was some work of complainant and for doing that work, amount was obtained by Accused. Section 13 of 1988 Act simply prohibited a public servant from obtaining pecuniary advantage or valuable thing and so it was necessary for prosecution to prove that amount was obtained by accused as a public servant. When tainted money was recovered from possession of a public servant, it was up to him to explain as to how he came in possession of such money. There was no reason to disbelieve Police Officer, who laid the trap. There was also no reason to disbelieve pant witness, wh was an independent witness. Use of presumption under Section 114 of 1872 Act, was justified.

iv] Tarsem Lal Vs. State of Haryana in Criminal Appeal No. 208 of 1978 wherein it is observed that trap laid by S.D.O. and bribe money recovered from accused. During trial accused stated that he had received money for depositing the same in small saving scheme. No such explanation was given by accused at time of search and recovery. Statement of accused was an afterthought.

v] Dhanvantrai Balwantrai Desai Vs. State of Maharashtra, Criminal Appeal No. 218 of 1960 wherein it is observed that the burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under Section 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is true one. The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted.

vi] C.M. Sharma Vs. State of A.P., Criminal Appeal No. 232 of 2006 wherein it is observed that on appreciation of evidence, witness can be broadly categorized in three categories viz., unreliable, partly reliable and wholly reliable. In case of a partly reliable witness, the Court seeks corroboration in material particulars from other evidence. However, in a case in which a witness is wholly reliable, no corroboration is necessary.

vii] N. Narsinga Rao Vs. State of Andhra Pradesh, Criminal Appeal No. 719 of 1195 wherein it is observed that prosecution proved that accused received gratification of Rs.500/- from complainant, in such a situation the court is under a legal compulsion to draw the legal presumption that such gratification was accepted as a reward for doing the public duty.

viii] State of U.P. Vs. Zakaullah, Criminal Appeal No. 724 of 1994 wherein it is observed that recovery of bribe money Solution used for conducting phenolphthalein test not sent to Chemical Examiner. Nobody overheard the demand made by the accused. Reliability of trap is not impaired. Solution is not always used not because there was any such direction by statutory provision, but for the satisfaction of the officials that accused would have really handled the money.

ix] State of Maharashtra through C.B.I. Vs. Mahesh G. Jain,

Criminal Appeal No. 2345 of 2009 wherein it is observed that when there was an order of sanction by competent authority indicating application of mind, same should not be lightly dealt with. Hence, flimsy technicalities could not be allowed to become tools in hands of an accused.

x] State of Madhya Pradesh Vs. Jiyalal, Criminal Appeal No. 1386 of 2009 wherein it is observed that the sanction order was clearly passed in discharge of routine official functions and hence there is a presumption that the same was done in a bona fide manner. It was of course open to the Respondent to question the genuineness or validity of the sanction order before the Special Judge but there was no requirement for the District Magistrate to be examined as a witness by the prosecution.

8] Learned senior advocate Mr.S.K. Jain urged that there is no proof showing on 25/3/2019 there was demand of bribe by any of the accused. The evidence of panch is not corroborated. The certificate under section 65B of Evidence Act filed by the complainant relating to the complaint and pen-drive is not admissible because once conversation were recorded in the smart phone of complainant, he should have produced it but it was best evidence withheld by the complainant and prosecution. Exh.29 does not disclose the reference of pen-drive. The verification panchanama discloses that it was prepared at Akurdi office whereas witnesses speak it is prepared at Railway officer's rest house, Pune. There was discussion between accused and complainant on account of tax liability and not on the demand of bribe. At the time of trap driver of complainant Mr. Pathan was there but where he was dropped and when and from where complainant went in his vehicle is not proved. There is no evidence from where alternate pant arranged by the Investigation Officer. Exh.28 is showing it was prepared on 20/3/2019 and not on 25/3/2019. The

statement of Mr. Shailesh recorded after one and half month. The delay is not explained. It is necessary that acceptance should follow by demand but there is no evidence about the demand. It is expected panchanama should prepare immediately but it is not prepared so. The evidence on record are inconsistent. After trap till next day DVR was with Mr. Dhan Singh and Mr. Dhan Singh was not with complainant or Investigation Officer, therefore, chances of tampering SD cards cannot be ruled out. To support his argument he pressed in to service following citations –

i] C.M.Girish Babu Vs. CBI, Cochin, High Court of Kerala, (2009) 3 Supreme Court Cases 779 wherein it is observed that accused can rebut charge either through cross-examination of prosecution witnesses or by adducing reliable evidence. Burden of proof on accused under Section 20 is not the same as the burden placed on prosecution to prove case beyond reasonable doubt.

ii] Gulabdastagir Ramzan Inamdar Vs. The State of Maharashtra, Criminal Appeal No. 823 of 2015 wherein it is observed that the prosecution should produce the proof of demand of bribe as well as acceptance of bribe voluntarily. It is for the court to assess the evidence of complainant as like interested witness because he is partisan witness. If a party in possession of best evidence which will throw light in controversy withhold it, the Court can draw an adverse inference against him notwithstanding that the onus of proving does not lie on him.

iii] Anvar P.V. Vs. P.K. Basheer, (2014) 10 Supreme Court Cases 473, wherein it is observed that in absence of such certificate, secondary evidence of electronic record cannot be admitted in evidence.

iv] Banarasi Das Vs. State of Haryana, (2010) 4 Supreme Court Cases 450 wherein it is observed that mere recovery of money from the accused by itself is not enough in absence of substantive evidence of demand and acceptance.

v] Kashinath Shiru Ahire Vs. The State of Maharashtra, 2020 ALL MR (Cri) 288, wherein it is observed that the attending

circumstances of the present matter in hand, manifestly demonstrate that except the single attempt of demand of bribe by accused there were no allegations that appellant-accused made repeated demand of bribe on each and every visit of the complainant to him. There was no attempt to get verify the demand of bribe on the part of appellant-accused in presence of panch witnesses. Moreover, no any corroboration is available on record to fortify the demand of bribe by appellant-accused. In such circumstances, bare on the sole version of complainant PW-1 Shaligram, it would unsafe to draw adverse inference that the appellant-accused made demand of bribe to complainant.

vi] P.Satyanarayana Murthy Vs. Inspector of Police and another, AIR 2015 Supreme Court 3549 wherein it is observed that mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring hme the charge under these two sections of the Act.

vii] Mohan Lal Vs. State of Punjab, AIR 2008 Supreme Court 3853 wherein it is observed that fair investigation is foundation of fair trial and requires informant and Investigating Office not to be same persons especially in laws carrying reverse burden of proof. When informant and Investigating officer is same person, investigation is said to be vitiated.

viii] Laxman s/o Nanabhau Bangar and Anr Vs. The State of Maharashtra, 2019 ALL MR (Cri) 2523 wherein it is observed that complainant stated that his complaint was reduced into writing by I.O. in the office of ACB and he had also taken notes. However, no handwritten complaint or notes produced on record. Also at time alleged demand and acceptance of bribe both panch witnesses were not aware who was going to come in hotel and to whom complainant was going to pay bribe money. Evidence of panch witnesses, not reliable. Further evidence of panchas showing that contents of panchanama were not written as per their instructions but were according to members of raiding team and they just signed it mechanically. Recovered currency notes not sealed on spot. Recovery of notes, not sufficient to to establish guilt of accused. Except oral evidence of complainant, nothing on record to show that accused made demand of bribe amount. Prosecution failed to establish alleged demand and acceptance beyond reasonable

doubt. Accused cannot be convicted for offence under section 7 r/w. S. 13(1)(d).

ix] State of Punjab Vs. Madan Mohan Lal, AIR 2013 Supreme Court 3368 wherein it is observed that mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe.

x] Vijaykumar Piraji Chinchalkar Vs. State of Maharashtra, 2919(3) Crimes 550 (Bom.) wherein it is observed that mere recovery of money de hors demand would not be sufficient to convict public servant for such offences.

xi] State of T.N. Vs. M.M. Rajendran,(1998) 9 Supreme Court Cases 268 wherein it is observed that failure to place before the detaining authority all the relevant materials including the statements recorded by the IO, sanction accorded on the basis of report of Vigilance Department is invalid.

xii] Panalal Damodar Rathi Vs. State of Maharashtra, (1979) 4 Supreme Court Cases 526 wherein it is observed that complainant to be regarded as an accomplice, to be corroborated in material particulars before being relied upon, Prevention of Corruption Act, 1947, Section 5(1)(d) and 5(2) and IPC, 1860, Section 161 on facts, demand of bribe money not corroborated.

xiii] State through Central Bureau of Investigation Vs. Dr. Anup Kumar Srivastava, AIR 2017 Supreme Court 3698 wherein it is observed that if there is no material evidence on record for proving the conspiracy, if there is no evidence showing there was demand of bribe and acceptance, it is weak case of the prosecution.

9] Learned advocate Mr. Pathan for accused no.2 urged that it is unique managed trap against innocent and honest public servant. There is no demand of bribe by the accused no.2. No verification panchanama was prepared against accused no.2. The primary evidence is not produced. There is no circumstances and material showing accused no.1 & 2 acted in pursuance of the

conspiracy. To support his argument he pressed into service following caselaws –

i] Satyanarayana Murthy Vs. The Dist. Inspector of Police, Criminal Appeal No. 31 of 2009, wherein it is observed that the Court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.

ii] Union of India through Inspector, CBI Vs.Purnandu Biswas, Appeal(Crl.) 471 of 2004, wherein it is observed that, material document which was in favour of the Respondent was not annexed with the charge-sheet. It is one of the infirmity in the case of prosecution.

iii] Tryambak Lilaji Binnar Vs. State of Maharashtra, 2002 BomCR Cri. wherein it is observed that once the evidence of earlier demand is not proved then the entire trap become illegal.

iv] Bhagwan Singh Vs. The State of Rajasthan, AIR 1976 SC 985 in this case the complainant was head-constable who was also Investigation Officer and it was material infirmity which is bound to reflect on the credibility of prosecution case.

v] Vijayan Rajan Vs. State of Kerala, Supreme Court, Judgment dtd. 16Th February, 1999, wherein it is observed that to bring home the charge of conspiracy within the ambit of Section 120B of the Indian Penal Code it is necessary to establish that there was an agreement between the parties for doing an unlawful act. It is no doubt true that it is difficult to establish conspiracy by direct evidence and, therefore, from established facts inference could be drawn but there must be some material from which it would be reasonable to establish a connection between the alleged conspiracy and the act done pursuance to the said conspiracy.

vi] State of Maharashtra Vs. Shankar Kurlekar and another, 1999 CRI.L.J. 196 wherein it is observed that in order to consider the evidence of recorded conversation it is for the prosecution to give the explanation about the otherwise music and voices if appeared in the recorded conversation.

10] Thus, in view of above precedents it is mandatory for the prosecution to prove the demand of bribe and then acceptance of bribe by the public servant. It is for the Court to examine the evidence of complainant very carefully and cautiously by considering he is interested witness. It is necessary for the court to see whether sanctioning authority has applied mind while awarding the sanction or not.

11] In view of examination-in-chief, cross-examination and argument it appears that accused persons did not dispute that they are public servant at CGST office, Pune. Accused no.1 was then Inspector, CGST and promoted as Superintendent and accused no.2 was Superintendent, CGST. It is not in dispute on 25/3/2019 they were on duty and PW 7 Mr. Sachin Ghagare was their immediate Boss as Assistant Commissioner. It is not in dispute that accused no.1 and 2 were working under Head-quarter Preventive Unit at CGST and it is their job profile to carry out anti-evasion activities. They have to prevent the tax evasion carried out by businessmen. They have to develop the intelligence and based on the intelligence they have to act and prevent tax evasion. Once they realized there is possible tax evasion by someone then they have to prepare the report and put up the intelligence on the file to Assistant Commissioner, Head-quarter Preventive Unit and subsequently get it approved from Joint Commissioner for possible action of recovery of tax. Unless and until there is approval on the report they cannot contact the businessman or particular person who is suspected of tax evasion. It is not in dispute dues of service tax has to pay only through Bank challan. There is no provision to collect cash by any of the officer from any assessee.

12] Shri Bageshree Restaurant is situated at Khalapur but it's registered office is shown at Pune and it is registered for service tax purpose at Pune Commissionerate office. It is not in dispute that Shri Bageshree Restaurant has submitted online returns through M/s R.J. Lahotia, Chartered Accountant for the financial year 2016-2017 and first quarter of 2017-2018. The accused persons did not dispute that they are public servants and they were discharging their duty at GST, in my view, it is not necessary for me to refer their service details including service book, officer order showing their duties responsibilities below exh.62 collectively.

13] The complainant PW 3 Mr. Padmakar More deposed that his wife Manik is partner in Shri Bageshree Restaurant. He is looking after consultancy issue of the tax of said Restaurant. PW 6 Mr. Shailesh deposed that the complainant was looking after consultancy issue of taxes of Shri Bageshree Restaurant and he being clerk of M/s M.J. Lahotia and Company was attending the matter of service tax on behalf of Shri Bageshree Restaurant. PW 6 Mr. Shailesh deposed that complainant was looking after issue of service tax of Shri Bageshree Restaurant. This fact is corroborated from the evidence of complainant. The wife of complainant is partner in Shri Bageshree Restaurant and therefore it is but natural for complainant to look after service tax issue of Shri Bageshree Restaurant once they appointed him and authorized to look after matter. Learned advocate for accused urged that there is no written authorization for looking after service tax issue of the complainant. It is true but when wife of complainant is partner in Shri Bageshree Restaurant, he being husband and interested person even without written authorization under consent of proprietor can look after

service tax issue. He has nothing to do but he has to take work from their Chartered Accountant M/s R.J. Lahotia and company. Thus it is proved the complainant was authorized person on behalf of Shri Bageshree Restaurant to look after service tax issue of Shri Bageshree Restaurant. Apart from this in view of argument advanced by Mr.S.K. Jain that complainant had met the accused persons and discussed issue of tax and calculated duty and tried to convince him how the liability is correct, it indicates that accused did not dispute complainant was looking after issue of service tax on behalf of Shri Bageshree Restaurant. Learned advocate Mr. Jain tried to point out that registration of Shri Bageshree Restaurant is illegal. In fact that is not the subject issue before this court. Even though I supposed it's registration is illegal despite this it does not affect on the accusatoin against accused.

14] PW 1 Francis Pareira was Nodal officer in Reliance JIO Info Com Ltd., Pune. He has furnished CDR and SDR of cell no. 7980552575. It was in the name of Chandankumar Sharma r/o. West Bengal, Kolkata. The Investigation Officer deposed that Mr.Chandankumar Sharma is brother-in-law of accused no.1. Accused no.1 was using said SIM card at Pune. Said fact is corroborated from the CDR and SDR at exh.14 which discloses that it's location is at Pune. Further it appears from the evidence of complainant that accused no.1 called him on his cell number from the said contact number time to time and the said fact is reflected in exh.14. Apart from this, this fact stated in the evidence of PW 1 Mr. Francis is not disputed by accused no.1. Even accused no.1 did not deny that Mr.Chandankumar Sharma is not his brother-in-law. In the evidence of Investigation Officer Mr. Nair accused no.1 did not

specifically denied that said contact number was not in his use and Mr.Sharma is not his brother-in-law. Thus, from the aforesaid evidence, I hold that, contact no. 7980552575 was in use of accused no.1 at the relevant time. If it was in possession of Mr. Sharma then CDR would not have shown its location in Pune.

15] PW 2 is Mr. Aditya Niphalkar, Officer of Vodafone Idea Ltd, Pune. It appears from his evidence that contact no. 9822150310 was issued for accused no.2. He further deposed that cell no. 9822013698 was in the name Smt. Manik Padmakar More. It's CDR and SDR details showing that both contact numbers were operated under Pune tower. The evidence of PW 2 Mr. Aditya is unchallenged by both the accused persons. It discloses that accused did not dispute about their contact numbers and similarly accused persons did not dispute about the contact number of complainant. In the same way SDR and CDR are not disputed which discloses that complainant and accused no.1 was in contact in February and March 2019 and they are acquainted to each other.

16] It has come in the evidence of complainant that returns of Shri Bageshree Restaurant are being submitted with M/s R.J. Lahotia and Company, Pune, Chartered Accountant. They had filed returns for Restaurant for the financial year 2016-2017 and first quarter of 2017-2018. The evidence of complainant on the point of submitting returns are not disputed. It has come in the evidence of PW 6 Mr. Shailesh that he is accountant in the firm of M/s R.J. Lahotia and Company and he is dealing with the filing income tax returns, GST, VAT etc.. He deposed that he has filled online income tax and service tax returns of Shri Bageshree Restaurant for the financial year 2016-2017 and 2017-2018. He further deposed that in

November, 2018 he received call from accused no.1 and he made inquiry relating to service tax returns of Shri Bageshree Restaurant. Mr. Shailesh, met accused no.1 along with relevant documents. He checked it and again stated that returns are not proper. They should pay tax otherwise Superintendent will issue notice. The accused no.1 further told him that claim is not proper and if he want to close the file then he should pay him Rs.5 lacs as bribe otherwise he will issue notice. Mr. Shailesh also met accused no.2 and narrated about claim and exemption of Shri Bageshree Restaurant on which he replied he should pay tax otherwise follow instructions of Sanjeebkumar.

17] PW 6 Mr.Shailesh further deposed that he has intimated the fact to complainant that the accused persons have taken objection to their returns and thereafter PW 3 complainant Mr. More and PW 6 Mr.Shailesh again met accused no.1 and 2. At that time, accused persons have demanded the bribe for not issuing notice for the returns of Shri Bageshree Restaurant. PW 6 Mr.Shailesh is cross-examined wherein he admits that complainant Mr.More told him to meet CBI officers and give his statement. The witness Mr.Shailesh himself informed about the fact of demand of bribe to Mr.Padmakar More and he is one of the material witness. In these circumstances if Mr. More say him to go and meet CBI officers then I think nothing is wrong. I have gone through cross-examination of Mr.Shailesh. It discloses that his statement is recorded very delayed stage but his name is appeared since beginning from the complaint and in these circumstances if his statement recorded after trap it does not mean that there is infirmity in such statement.

18] PW 3 complainant Mr.More deposed that he came to know from Mr.Shailesh that accused are demanding bribe for not issuing notice for the returns of Shri Bageshree Restaurant. The complainant met accused no.2 along with Mr.Shailesh in February 2019 and discussed the issue of service tax. At that time, accused no.2 explained him they should pay tax or decide what else they can do. Said conversation was recorded by the complainant in his cell phone. In March 2019 again complainant met accused no.2 and discussed issue of service tax. At that time accused no.2 told him if they want to overlook returns issue they should pay bribe to them. He further deposed that at the relevant time in March 2019 complainant explained demand is big one. On that accused no.2 told him to reduce up to one and make it four. Said conversation was also recorded by the complainant in his cell phone. On 15/3/2019 complainant met accused no.1 outside GST office at tea stall and negotiate bribe amount and settled up to Rs.3 lacs. The conversation dtd. 15/3/2019 was also recorded.

19] The complainant has produced conversation recorded in February, March 2019 and on 15/3/2019 with accused no.1 and 2 in pen-drive to CBI officer along with certificate under section 65B of Evidence Act on the date of complaint. In fact the conversation have been recorded in smart phone then it is expected complainant himself should have produced the said smart phone for its examination before CBI or CBI officer should have seized it. The complainant himself copied the conversation in his laptop, then copied it in pen-drive and then produced pen-drive. Whereas there is no proof when it was copied and whether laptop and pen-drive was in absolute custody of complainant or not. Further complainant

[22]

admits his son has access to the laptop and his son has made assistance to prepare certificate and copy the conversation in pen-drive. In case of Gulabdstgir and Purnandu Biswas it is observed that if best evidence is withhold it's adverse inference has to be drawn. In present case best evidence was smart phone but it was withhold by the complainant and CBI. Therefore, transcription was prepared of the conversation with accused persons from pen-drive cannot be admissible in evidence. Therefore, there is no need to say and ascertain what is the conversation and whether it is of accused no.1 and 2 or not but again the fact remains that though I cannot read the conversation in evidence, despite this substantive evidence of complainant and Mr. Shailesh cannot be discarded. The reason is that Mr. Shailesh is a person who has submitted the returns. Therefore, if there is any infirmity in returns it is but natural for the officer of CGST to call the concern person and ask to pay deficit. It is but natural for Mr. Shailesh to intimate said fact to the person who is looking after the service tax issue on behalf of Shri Bageshree Restaurant. In these circumstances substantive evidence which shows that accused no.1 and 2 being officers in Preventive Unit noticed certain infirmities in returns of Shri Bageshree Restaurant and instead of preparing proposal for taking the approval for issuing notice they out and out contacted Mr. Shailesh and complainant by abusing their authority and demanded bribe for not issuing notice. These witnesses are cross-examined at length. But nothing appeared in their evidence to discard the fact of demand.

20] Learned advocate for accused no.1 urged that there was no demand of bribe on 25/3/2019 and if there is no demand,

acceptance of bribe amount has no significance. In fact on plain reading of Section 7 of Prevention of Corruption (Amendment) Act, 2018 indicates mere demand by public servant itself is an independent offence and accepting the amount is also independent offence. Apart from this, to that effect it has come in the evidence of complainant that on 25/3/2019 in morning about 10.50 am he received the call from accused no.1 and he asked him whether he is coming in first session or not. Said fact is corroborated from the CDR details (exh.14) that there was call from contact no. 7980552575 to contact no. of complainant 9822013698. It's duration is 20 seconds. On that day accused no.1 had called the complainant to meet him.

21] On 25/3/2019 complainant has lodged the complaint and thereafter TLO has decided to verify whether there was demand or not. To that effect it has come in the evidence of complainant, TLO and panch Mr.Mangesh Pokale that on 25/3/2019 complainant met accused no.1 at GST office. At that time complainant had called accused no.1 to meet him. The said fact is reflected in exh.14 that the complainant had called the accused no.1 at about 17.59 hrs. Their conversation have been recorded in SD card through DVR. It's transcript is at exh.37 collectively, annexure VII. The Investigation Officer also supports to the said version. After gone through the transcript and examining SD card Article H it appears the accused no.1 has demanded the money other than legal charges. It also discloses that the accused no.2 was aware about the demand of bribe by the accused no.1. Apart from this accused no.1 did not dispute that he did not met the complainant on 25/3/2019 at GST office near one tea stall. PW 4

[24]

Mr.Mangesh himself witnessed that accused no.1 met complainant and discussed the issue of service tax. The complainant states that on 25/3/2019 when he met accused no.1 at outside office of CGST, accused no.1 told him that he has reduced amount up to Rs.3 lacs and at the same time accused no.1 told that accused no.2 is saying him whenever complainant met he used to get reduce the amount. This indicates that there was demand of bribe by the accused persons. Mr.Mangesh Pokale states that when talk was over and accused no.1 returned to his office and complainant met, Mr. Dhan Singh took the DVR from complainant and switched off and then removed SD card and sealed by taking its copy in official laptop. Thus, from the evidence of PW 3 complainant Mr. More and PW 4 Mr.Mangesh Pokale it is proved that accused no.1 had met complainant outside the office on 25/3/2019 at about 18.00 hrs. and he was remained with complainant almost half hour. . No doubt complainant is partisan witness and I have to scrutinize his evidence very carefully and cautiously. It also requires corroboration. The SD card Article H used for the purpose of verification panchanama is produced alongwith charge-sheet. Myself heard the conversation recorded in SD card and compared the transcription onwards exh.37. It shows that on 25/3/2019 complainant called accused no.1 and accused no.1 given assurance he would met him. It further discloses that complainant and accused no.1 met at public place near one tea stall and discussed the issue of service tax and it discloses that accused no.1 initially demanded bribe of Rs.5 lacs and ultimately bribe amount was settled for Rs.3 lacs. The transcription below exh.37 is proof of fact that accused no.1 being public servant demanded

bribe and therefore TLO has decided to lay the trap. Apart from this accused no.1 did not dispute that his voice sample was collected by TLO. The SD card used for verification panchanama and voice sample are sent to CFSL, New Delhi for spectrography report by Investigation Officer. The spectrography report is at exh.68. It discloses that voice appeared in SD card Article H [exhibit 2] (conversation recorded at the time of verification) and Article I [exhibit 7] (conversation recorded at the time of trap) and voice sample at Article L [exhibit 9] are of similar means of accused no.1. Thus, there is proof on record showing that accused no.1 has demanded bribe as public servant for settling service tax issue of Shri Bageshree Restaurant. The evidence of complainant is corroborated with the digital record and also corroborated from the evidence of panch witness Mr. Mangesh Pokale and scientific test of spectrography. Therefore, there is no substance in the argument advanced by accused. Thus, I hold that, accused no.1 demanded bribe repeatedly since long and same thing is reiterated by him on 25/3/2019 at the time of verification and same facts are appeared in verification panchanama at exh.30. According to accused persons verification panchanama showing that it is prepared at Akurdi office. No doubt in verification panchanama, place of panchanama is showing Akurdi but panch Mr. Mangesh as well as TLO showing that it is prepared at Railway officer's rest house, Pune. Therefore, mere infirmity at one place that panchanama is showing Akurdi, it does not mean that it is prepared at Akrudi and it cannot be reduced it's evidentiary value .

22] It has come in the evidence of complainant Mr. More and panch witness Mr.Mangesh and Investigation Officer that after

verification panchanama CBI team demonstrated reaction of chemical properties phenolphthalein powder and sodium carbonate at Railway officer rest house, Pune. I have gone through the pre-trap panchanama exh.32. It is prepared from 20.10 hrs to 21.25 hrs.. At the relevant time complainant has handed over Rs.1 lac in denomination of Rs.500/- each total 200 GC notes in two bundles. The officer of CBI team has taken its serial number on the official laptop and taken printout and printout was handed over with panch Mr.Sushil Paswan with direction to retain with him till further direction. Thereafter, Mr.Nitin Patil applied phenolphthalein powder on each GC note and bundles were kept in the right side pant-pocket of complainant and directed him not to touch and remove it unless it is required to hand over to accused no.1 and demand is there. Thereafter, they all team members washed their hands to avoid contact of any chemical properties of phenolphthalein powder. The complainant and accused have already decided they have to meet at Gunjan Theatre. Accordingly, complainant, panch and Mr. Dhan Singh proceeded in his car towards Gunjan Theatre whereas rest of persons went there by Government vehicle. The post-trap panchanama exh.33 is showing that the CBI team and complainant reached to Gunjan Theatre about 21.40 hrs.. The CDR exh.14 is showing that at about 21.47 hrs complainant called the accused no.1 from his cell. The said conversation was recorded in SD and its transcript showing that accused no.1 assured complainant that he will come there within 5 to 10 minutes. At the same time he confirmed that whether someone is accompanied to the complainant or not. This conduct of accused no.1 speaks a lot. It appears from CDR exh.14 and transcription that accused no.1

called the complainant from his cell at about 22.00 hrs. At the same time TLO states that at Gunjan Theatre he saw complainant and a person came there were talking on phone and they both disconnected their phone. Thereafter, it appears from the evidence of pancha and TLO that they saw complainant has met one person at Gunjan Theater and after brief talk they again proceeded ahead and stopped their vehicle near food stall. Complainant got down from his car. He was talking with accused no.1. Meanwhile accused no.2 had come there, also participated and joined accused no.1 and complainant. The transcript panchanama and SD card of post-trap panchanama discloses that accused no.2 participated in the talk of complainant and accused no.1 and he was present there.

23] It has come in the evidence of complainant, pancha and TLO that the complainant sat in his car on driver seat and accused no.1 sat on the beside seat of the driver seat in the car of complainant. Thereafter they saw complainant has given pre-decided signal by putting parking lights of the car on and immediately CBI team rushed there, recovered amount from the left side pant-pocket of accused no.1, taken both handwash of accused no.1, found the solution turned into pink, the TLO provided alternate pant to accused no.1 and also taken the wash of pant-pocket of accused no.1 with cotton swab and it's solution has been preserved in presence of panchas. Meanwhile TLO and Investigation Officer prevented accused no.2 from crossing the road. Accused no.1 was arrested there. They also arrested accused no.2 at the place of incident. Thereafter, Mr. Sushil Paswan panch tallied serial numbers of the GC notes with the printout available with him and found tallied with the seized GC notes. The GC notes are produced during

trial. It's serial numbers have been tallied with annexure A which appearing one and same. This witness has been cross-examined by the both accused at length. There is no explanation of accused no.1 that how he was present there, how he sat in the car of complainant, why he has called accused no.2 there, why accepted Rs.1 lac from the complainant and why it is put in his pant-pocket. His defence is of false case is filed but everything discussed above is a proof against him showing that he was present there, he was boarded in the car of complainant and accepted Rs.1 lac from him. Therefore, PP Mr. Arikar rightly urged that Section 20 of Prevention of Corruption Act comes into picture which provide the presumption to the fact that accused being public servant has accepted bribe from the complainant.

24] The evidence of complainant is fully corroborated with the evidence of panch witness, circumstances and CFSL reports exh.65 collectively shows that handwash of accused no.1 containing chemical properties of sodium carbonate and phenolphthalein powder. Apart from these facts and conversation at the time of relevant trap have been recorded in the SD cards with the introduction of panchas and pancha states that SD card was fresh one and Mr. Dhan Singh has put DVR in operating mode in shirt-pocket of the complainant. I have examined SD card Article I through official laptop and heard conversation and tallied with the transcription at exh.39 is showing that transcription is prepared properly and as per facts. It discloses that at the time of trap accused no.1 has demanded amount saying that he will accept amount very soon near one temple and thereafter accused no.2 joined there and accused no.1 has accepted bribe amount in the

car. Thus, oral evidence of complainant, panch and TLO have been corroborated with the digital evidence at Article I also corroborates the facts that voice recorded in SD card at Article I is of accused no.1. The witness Mr. Sachin Ghagare also identified voice of accused persons. It is one more corroborative evidence but for that accused urged that CBI officer has provided written script of dialogues and on that basis Mr. Sachin Ghagare has identified voice of accused persons. The evidence of Mr. Sachin is having little importance because CFSL has examined voice of accused in SD card at Article H and I and voice samples at Article J (Exhibit 8 marked by TLO) and Article L (exhibit 9 marked by TLO) and found it is similar voices of accused no.1 and 2. I would like to say that complainant has been cross-examined at length but nothing achieved by accused persons to discard his evidence.

25] It has come in the evidence of PW 7 Mr. Sachin Ghagare that there was no file of Shri Bageshree Restaurant for issuing notice etc. in their office but its return have been submitted. Mr. Sachin further deposed that accused were working under his control in Preventive Unit and they have access to the data of returns filed by Shri Bageshree Restaurant. It indicates that accused no.1 and 2 noticed that there is some infirmity in the returns of Shri Bageshree Restaurant and therefore instead of preparing proposal and submitting information to the office for its approval they out and out made attempt to cash it by abusing their authorities. This is nothing but absolute abuse of authority by accused persons in pursuance of the conspiracy and nothing else. It is also dishonest intention of the accused persons towards their Institution because once they have come across such infirmities

they should have put it in black and white and they should have take the approval of higher authorities for initiating the action against Shri Bageshree Restaurant .

26] Investigation Officer PW 8 Mr. Sajish Nair deposed that he has sent handwash of accused no.1 to CFSL Kharadi along with special messenger in sealed bottles separately. CFSL Kharadi examined those solutions of handwash of accused no.1 and found there were chemical properties of sodium carbonate and phenolphthalein powder.

27] Investigation Officer further deposed that he has sent voice samples and SD cards used at the time of verification panchanama and trap for spectrography report. Spectrography report has been received at Exh.68. It showing spectrography test comes positive and voice of accused no.1 and 2 are similar to the voice sample.

28] The Investigation Officer further stated that he has sent proposal before Sanction Authority for taking sanction to prosecute and in said proposal he did not file spectrography report. According to accused all relevant material were not available before sanctioning authority and therefore without relevant material if sanction is accorded it would be defective sanction and without application of mind. To that effect accused no.1 is cross-examined Sanctioning Authority PW 9 Smt. Vandana Jain wherein she admits spectrography report was not part of documents when she has accorded sanction but at the same time she has given explanation that spectrography report is one component and not exclusive proof to accord the sanction. In fact sanction itself discloses which material has been considered by sanctioning authority. The

sanction itself having with the reasons for awarding sanction and therefore in my view though spectrography report was not part of material before sanctioning authority at the time awarding sanction, it is not such a infirmity by which court can say that sanction has issued by authority without application of mind.

29] Learned advocate for accused no.2 urged that there is no proof of conspiracy showing involvement of accused no.2 in the commission of offence. First of all I would like to say that conspiracy is such a secret act between two persons. Therefore, I should not express that the prosecution should produce direct evidence. The Court can consider circumstances and if circumstances are positive then court can draw inference that there is proof of conspiracy.

30] First of all I would like to say that evidence of PW 7 Mr. Sachin is showing that accused no.1 and 2 are working since 2017 in Preventive Unit under his control and their job profile are one and same to prepare intelligence about tax evasion. It seems that accused no.1 and 2 are acquainted with each other as they are working together.

31] The second fact is showing that the complainant and Mr. Shailesh met accused no.2 and told him that accused no.1 has demanded bribe. Accused no.2 was silent on that point and when complainant told amount of bribe Rs.5 lacs asked by accused no.1 is very huge amount, on that he replied then they should pay four. It seems that accused no.2 is part of conspiracy to accept bribe from complainant otherwise he would not have insisted to reduce the amount and pay it or he would not have told him about the details of Shri Bageshree Restaurant.

32] The conversation recorded at the time of verification

[32]

also indicates that accused no.2 was involved in the commission of offence.

33] Fourth aspect is that on 25/3/2019 at the time of trap accused no.2 was present at the place of incident onwards Gunjan Theatre and he had come there at the call of accused no.1. If he was not part of conspiracy accused no.1 would not have called him at the time of accepting bribe from the complainant. If he was not part of conspiracy, complainant would not have talked with him at the time of trap and he would not have joined there. If he was not part of conspiracy, he would not have allowed accused no.1 to accept the bribe from complainant. If he was not part of conspiracy, to see the fact CBI caught accused no.1 he would not have tried to flee from the place of incident, rather he would have enthusiastic to see what is going on with accused no.1 and why people have caught him along with complainant. The Evidence Act is complete code. It is not helpless at any point of view for bringing the truth on record. Section 8 of Evidence Act is very relevant which indicates the conduct of accused is very material for proving accusation against him. In present case though there was no file, despite this accused no.2 given suggestion to the complainant that they can overlook the file and he reduced bribe amount up to four. Then he has joined accused no.1 at the time of accepting money and he has tried to flee from the place when accused no.1 caught by CBI officers. Thus the relevant conduct of accused no.2 leads me that he is absolute part of conspiracy and without his blessings it is not possible for his subordinate to ask such huge amount for settling service tax issue of Shri Bageshree Restaurant. Thus, I hold that very conduct of accused no.2 and evidence of complainant and

evidence of Mr. Shailesh and TLO discloses that he is part of conspiracy to demand and accept the bribe from complainant.

34] Accused no.1 is public servant. He accepted bribe and therefore in view of citations submitted by learned PP I have to presume that accused no.1 has accepted bribe to overlook the service tax issue of Shri Bageshree Restaurant as public servant. The prosecution has established the fact that accused no.1 and 2 abused their power and exceeded it to receive bribe from the complainant by calling him and demanding bribe though legally they were not entitled to accept money from any assessee. They have not given any explanation how they have met complainant outside office and they have received such huge amount. The evidence of complainant corroborated from the evidence of panch as well as digital record and the fact ascertained in CFSL report of solution of sodium carbonate and phenolphthalein powder and also spectrography report.

35] In the case of Girish Babu it is observed that accused can rebut the charge through cross-examination. Said ratio not disputed at all. However, in present case charge is not rebutted by way of cross-examination showing case of prosecution is also doubtful or suspicious. In case of Gulabdastgir it is observed that there should be evidence for demand of bribe as well as acceptance of bribe voluntarily. The same ratio is laid down in the number of cases referred by accused. The evidence of complainant and Mr. Shailesh is proof of fact that accused have demanded bribe and there is proof that tainted GC notes are recovered from accused no.1 in the car of complainant. This speaks there is sufficient evidence. In case of Bashir is observed certificate is

[34]

necessary to adduce secondary evidence. The pen-drive is secondary evidence, certificate is filed but when best evidence was available it was not recovered and therefore secondary evidence is ignored by this Court. In present case there is proof of demand as well as recovery of tainted amount. Therefore, caselaws filed by accused no.1 on the point of requirement of proof of demand and acceptance are not helpful. In present case there is substantive and circumstantial evidence as discussed above showing involvement of accused persons. Therefore, I find no substance in the argument advanced by accused. The accused referred sanction is defective. But to that effect I have already discussed that sanctioning authority though admits that spectrography report was not there before awarding sanction, but it was one of the component to arrive at conclusion about involvement of accused in the commission of offence and not sole component. Accused no.2 also referred para supra cases but there is absolute proof discussed about showing accused no.2 is part of conspiracy to accept the bribe from the complainant through accused no.1. Thus there is no substance in the argument advanced by the accused persons.

36] The accused urged that signature of one of the panch below exh.28 is showing that he has put said signature on 20/3/2019. According to him the complaint was typed on 20/3/2019 and panchas also signed the same on the same date. I made circle to the said signature by green ink sketchpen. I examined said date. It discloses that author has written '5' but some line is missing and therefore it appears at first look it is digit '20' but if it is carefully observed with naked eyes one can say it is '25'.

37] It is urged by accused no.1 that panch was not aware

whether complainant has brought laptop at the office on the date of complainant. Complainant states he had brought laptop. He may have brought or may not have brought the laptop it has no relevance because complaint is typewritten and filed which is on record. The complainant admitted he has filed written complaint. According to accused it is typed complaint and not written. In my view typed itself is written complaint. As there is no specific question whether complaint was filed handwritten or typed.

38] Accused urged that TLO is basically from Railway Department and therefore he arranged panchas from Railway Department and cited them as panchas though they have not present at any point of time. I am not agree with the submission because trap is dtd. 25/3/2019. Panchas have signed the complaint on 25/3/2019 itself. The post-trap panchanama dtd. 25/3/2019 and 26/3/2019 was prepared and on 26/3/2019 when accused were produced at the relevant time exh.33 was produced before me at the time of remand of accused and on 26/3/2019 I initialed post-trap panchanama on each page in order to avoid tampering of the document. It indicates that panchas have been acted as per facts and therefore they could have sign post-tap panchanama exh.33.

39] According to Mr.Jain there is no evidence how alternate pant is arranged at the time of trap for accused no.1. To that effect evidence of TLO is very clear which says that in his bag he has brought one T-shirt and pant. The TLO was aware he is going to attend the trap. In these circumstances, it is but natural for him to collect the relevant equipment which may in need at the time of trap.

40] I have recorded statement of accused persons under

section 313 of Cr.P.C.. I have gone through written notes of argument. I have not seen any infirmity by which I can turn down the case of prosecution. Thus, from the aforesaid evidence and discussion I hold that prosecution has established the case against both accused persons under section 7 of Prevention of Corruption (Amendment) Act, 2018 r/w section 120B of Indian Penal Code beyond all reasonable doubt. Hence, I answer point under discussion in affirmative.

41] Heard accused no.1 on the point of sentence and learned advocate Mr. Amol Dange. Accused no.1 submitted that he has two children, one is only of nine months and second is of four years. His widow mother is dependent on him. Nobody is there to look after them. Therefore, he requested for minimum sentence.

42] Learned PP submitted that offence is serious. Accused has abused and misused his official position. Therefore, maximum sentence may be awarded.

43] Heard accused no.2 on the point of sentence. He submitted that he has two daughters and wife. They are dependent on him. He further submitted that his family members also dependent on him. He requested for lenient view.

44] Learned advocate Mr. Pathan for accused no.2 urged that now a days entire Nation is facing problem of COVID-19. We are under threat of life and also our family is facing same problem. He further submitted that even Government has taken move to release under-trial prisoners and avoid crowd from prison. He requested to take lenient view while awarding sentence.

45] Learned PP submitted that the offence is against public at large. There is no ground to take the lenient view against such a person who are dishonest with their Institution and our Nation.

46] It appears from the record this is first offence of accused persons. The family members of accused persons are dependent on them. Now a days entire Nation is facing problem of COVID-19. As the accused persons having small children and nobody is there to look after them, in my view, though offence is serious, it is desirable to take lenient view while awarding sentence.

47] At the same time, I cannot ignore about the efforts of complainant. The complainant Mr. More has lodged report. It is one of the example in society and against persons who abusing and misusing their power while discharging their duty. The amount of Rs.1 lac paid by complainant is retained by the prosecution since the date of trap. He could not utilized the said amount from last one year. He has attended Court number of times and faced lengthy cross-examination. Therefore, it is proper to award compensation in favour of complainant. Hence, in the interest of justice I pass following order -

ORDER

- a] Accused no.1 Sanjeeb Kumar Rajendra Sharma is hereby convicted vide section 235(2) of Cr.P.C. for the offence punishable 7 of Prevention of Corruption (Amendment) Act, 2018 r/w 120-B of Indian Penal Code and sentenced to suffer rigorous imprisonment for **three years** and to pay fine of Rs.50,000/- (fifty thousand only) in default to suffer further imprisonment for six months.

- b] Accused no.2 Vivek Madhukar Dekate is hereby convicted vide section 235(2) of Cr.P.C. for the offence punishable 7 of Prevention of Corruption (Amendment) Act, 2018 r/w 120-B of Indian Penal Code and sentenced to suffer rigorous imprisonment for **three years** and to pay fine of Rs.50,000/- (fifty thousand only) in default to suffer further imprisonment for six months.
- c] Bail bonds of both accused stands surrender forthwith.
- d] Muddemal pen-drive, micro SD cards, bottles containing handwash, pant, be destroyed, after appeal period is over.
- e] If fine amount realised, out of that, amount of Rs.50,000/- (rupees fifty thousand) be paid to the complainant Mr.Padmakar More as compensation after the appeal period is over.
- f] The tainted amount of Rs.1,00,000/- is hereby confiscated be credited to the State after appeal period is over by removing the phenolphthalein powder from the currency notes.
- g] Muddemal amount of Rs.1,00,000/- (rupees one lac) is confiscated in terms of clause 'f', therefore, the amount of Rs.1,00,000/- shall reimburse to the complainant Mr.Padmakar More by the CBI forthwith.

Dictated and pronounced in open court.

(Pralhad C. Bhagure)
Special Judge (CBI-ACB), Pune.

Date - 21/3/2020

I affirm that the contents of this P.D.F. File Judgement are same word for word as per original judgement.

Name of Steno : Mrs.B.R.Jakka, Stenographer Grade 1
Court Name: : Shri. Pralhad C. Bhagure
Special Judge(CBI-ACB),Pune,
Judgment signed by
P.O. : 21/3/2020
Date of PDF File : 21/3/2020
Judgement uploaded on: 21/3/2020