A THE STATE REP. BY CBI, HYDERABAD

v.

G. PREM RAJ

(Criminal Appeal No. 261 of 2007)

NOVEMBER 19, 2009

B **[V.S. SIRPURKAR AND DEEPAK VERMA, JJ.]**

Prevention of Corruption Act, 1988 – ss. 13(1)(d) r/w s. 13(2); 7 and 20 – Demand and acceptance of illegal gratification – Prosecution for – Complaint for demand of bribe C *– Trap arranged – Phenolphthalein test proved positive – Two independent witnesses proving acceptance of illegal gratification – Conviction by trial court – Acquittal by High Court – High Court also directing reinstatement of the accused with all retiral benefits – On appeal, held: Acquittal not justified in* D *the facts of the case – The charge being u/s. 7, presumption u/s. 20 could be raised – High Court acted beyond its jurisdiction in directing reinstatement of accused and writing off the departmental enquiry whereby he was found guilty – Jurisdiction.*

E **Respondent-accused was prosecuted u/s. 13(1)(d) r/w s. 13(2) and s. 7 of Prevention of Corruption Act, 1988. According to prosecution, PW1- complainant was awarded contract for construction. He met the respondent-accused for signature on the agreement and** F **preparation of detailed programme of work schedule. Accused demanded a bribe of Rs. 50,000 and Rs. 5,000/- as its first instalment. PW.1 lodged a complaint alleging demand of bribe. PW. 1 stated that the accused had called him at a hotel for signing the agreement and for the payment of bribery. Trap was laid. Two witnesses (PWs 2** G **and 4) were called. PW2 was to accompany PW1, and PW4 was required to go with the trap party. Agreement was signed in the hotel. Thereafter, accused and PW1, when reached near the scooter of the accused, he paid him the bribe money (treated currency notes) which the accused**

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kept in the scooter bag. Thereafter accused handed over the copy of agreement to PW-1. Trap party reached and phenolphthalein test proved positive. Currency notes were seized. Trial Court convicted the accused. High Court, on appeal, acquitted him. Hence, the present appeal.

Allowing the appeal, the Court

HELD: 1.1. Unless the judgment of acquittal tends to be perverse or unless the inferences drawn in the acquitting judgment were not at all reasonable, possibly the acquittal should not be upset. However, in this case, there was no scope for recording of finding of acquittal. [Para 17] [1062-B]

1.2. The theory of pressure i.e. the accused had to approach the complainant for getting the signature on the contract under pressure of urgency, was of no consequence and could not be viewed as helpful to the defence. Even if the contract was to be got signed by PW-1, the fact remains that for the purpose of contract, ultimately, respondent-accused had to give the detailed programme of work. The signatures of PW-1 could have been obtained on the agreement and at that time, it was necessary that the work schedule was ready, which was to be prepared by the respondent-accused and it was for that purpose that the respondent-accused demanded the money. The High Court has not properly viewed at this position that the bribe was demanded for completing the contract, worth about Rs.35 lakhs. [Para 7] [1053-B-D]

1.3. The movement of the respondent-accused out of his office and going to the hotel after office hours at 6'O clock raises accusing finger towards the intentions of the respondent-accused. [Para 8] [1054-D-E]

1.4. The High Court, without going into the details of the evidence, has merely come to the conclusion that no demand was made. If no demand was made, there was no reason for the respondent-accused to accept the money

A offered by the complainant. The respondent-accused cannot deny that the money was actually touched by him. There is absolutely no cross-examination on the fact that when he dipped his finger in the solution of Sodium Carbonate, same turned pink, this is a very major
B circumstance, that the High Court has failed to note and explain, which shows that the High Court has taken a very casual attitude. That was a major circumstance and the most important incriminating circumstance, which was bound to be explained by the respondent-accused. [Para 9] [1055-B-F]
C

1.5. The evidence of complainant was fully corroborated by the evidence of PW-2, who was a Panch witness and who was to accompany the complainant. It can be said that there is some discrepancy about the hand, by which the respondent-accused accepted the amount,
D but that goes into the backdrop, on account of the clear evidence of PW-7 the Investigating Officer. The cross-examination of this witness, though lengthy, is perfunctory and serves no purpose. His basic story has remained unshaken. Some insignificant contradictions as to who
E gave the signal were brought in the evidence of this witness, but those would not affect the otherwise credible evidence of this witness. Therefore, this was a case where the evidence of PW-1 was totally corroborated by the evidence of PW-2 and PW-7. All this has been totally lost
F sight of by the High Court. [Para 11] [1059-E-G]

1.6. Once it was proved that the respondent-accused had accepted the money, the non-seizure of the bag and scooter will not affect the prosecution case. was an insignificant circumstance. The fact of the matter is that the
G money was recovered from the scooter bag. [Para 12] [1060-A]

1.7. There is nothing in the evidence of PW 5 to suggest the inference drawn by the High Court that it was at the instance of PW-5 that the respondent-accused was
H falsely implicated. The witness merely gave the

background, in which the respondent-accused was asked to get the signatures. There is nothing in the evidence or the cross-examination of this witness to suggest that it was at the instance of this witness that the respondent-accused was falsely implicated. The inference drawn by the High Court has absolutely no basis and only suggests that the High Court has read something in his evidence, which was not there at all. [Para 13] [1060-B-C; 1060-E]

1.8. The High Court, without even discussing the evidence in details, has gone to the extent of saying that the evidence of respondent-accused and PW-1 has the effect of establishing the defence of the respondent-accused by preponderance of probabilities. The respondent-accused has raised a theory that when he returned to his scooter for proceeding after the signatures were obtained, PW-1 approached him and forcibly thrust the amount in his hands. Such theory of thrusting the notes cannot be believed at all. [Para 13] [1061-A-B-C]

2.1. Prosecution was alleging that the respondent-accused had accepted or obtained from the complainant, gratification, which was other than the legal remuneration as a motive or reward for signing the contract or, as the case may be, for providing the schedule of work, so as to complete that contract. Therefore, there was no question of the presumption not being there, once it was proved that the respondent-accused had accepted the illegal gratification. In the whole cross-examination, the story of demand of the respondent-accused prior to the contract and the acceptance by the respondent-accused near the scooter stand, has not at all been demolished. Once this story becomes acceptable, there is no other go, but to raise a presumption u/s. 20 of the Act. [Para 10] [1057-C-E; 1058-C-D]

2.2. This important provision of Section 20 was also ignored by the High Court. This was again not a case falling u/s. 20(3) of the illegal gratification from being trivial, so as not to raise presumption – inference of corruption.

It was a substantial amount. Therefore, Section 20 of the Act could not have been ignored. [Para 10] [1058-D-F]

3. The High Court has *honourably acquitted* the accused and directed his reinstatement as senior most Civil Engineer, Civil Department with all usual retiral monetary benefits inclusive of restoration of seniority etc. with immediate retrospective effect. This was certainly not the jurisdiction on the part of the High Court, which had only to find whether the respondent-accused was guilty or not of the offence alleged against him. It has come in evidence that a full-fledged departmental enquiry was conducted against the accused, wherein he was found guilty. The step taken by the High Court in straightaway writing off the findings in departmental enquiry is without any justification. This aberration on the part of the High Court speaks of its wholly incorrect approach. [Para 19] [1062-D-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 261 of 2007.

From the Judgment & Order dated 11.11.2005 of the High Court of Andhra Pradesh in Crl. Appeal No. 226 of 2002.

Naresh Kaushik, Ranjana Narain, P.K. Dey, A.K. Sharma (for P. Parmeswaran), for the Appellant.

G. Prakash, for the Respondent.

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. In this Appeal, the judgment of the High Court, allowing the appeal of the respondent herein and acquitting him of the offence punishable under Section 13 (1) (d) read with Section 13 (2) and Section 7 of the Prevention of Corruption Act (hereinafter called "the Act" for short) is in challenge, at the instance of the State.

2. The respondent, at the relevant time, was working as a Senior Engineer in MIDHANI at Hyderabad during the year 1998.

One Preetpal Singh Sodhi of M/s Hardeep Industries was awarded a contract for the construction of Structural Steel Sheds for VSSC stores at MIDHANI. He was accordingly informed to contact the respondent-accused for preparation of detailed programme of work schedule, as also for signing the original agreement. Accordingly, he met the respondent-accused and requested him to prepare a detailed programme of work schedule for enabling him to sign the agreement. This was in the last week of May, 1998. The respondent-accused demanded a bribe of Rs.50,000/- or at least to pay Rs.5,000/- as first installment by 27.5.1998, failing which the respondent-accused showed his reluctance to prepare the detailed programme of work. Being aggrieved by this illegal demand, the said Preetpal Singh Sodhi (hereinafter called PW-1) lodged a complaint against G.Prem Raj (respondent-accused) with SP, CBI, Hyderabad. It was alleged that there was a telephonic conversation between Preetpal Singh Sodhi (complainant - PW-1) and the respondent-accused, according to which the complainant was called at the Taj Mahal Hotel, Narayanguda, Hyderabad on 27.5.1998 for signing the agreement, as well as, for the demand of bribery. After the complaint was registered, a trap was led by one R.M. Khan, Inspector, CBI (PW-7), wherein two witnesses were called and the usual demonstration of the use of phenolphthalein powder was shown. The notes were soiled with the phenolphthalein powder. They were handed over to Preetpal Singh Sodhi (complainant) with the usual instructions that he would go to Taj Mahal Hotel along with M.N. Sampath Kumar (PW-2) while the other Panch, H. Ramakrishna Murthy (PW-4) would be reaching with the trap party. Specific instruction was given that unless the bribe was demanded by the respondent-accused, Preetpal Singh Sodhi (complainant) would not touch the notes kept in his pocket. Accordingly, Preetpal Singh Sodhi (complainant) along with the trap party reached the hotel, where at about 6 O'clock the respondent-accused also arrived on a scooter and parked the scooter in the parking area. Then Preetpal Singh Sodhi (complainant-PW-1) and the respondent-accused went inside the hotel followed by M.N. Sampath Kumar (PW-2). Preetpal Singh.Sodhi (PW-1) and the

A respondent-accused occupied one table in the hotel and the next table was occupied by M.N. Sampath Kumar (PW-2). The agreements (Exhibits P-5 to P-8) were signed in Taj Mahal Hotel but the respondent-accused did not hand over the agreements to Preetpal Singh Sodhi (complainant). The complainant and the respondent-accused came out of the hotel, who were followed B by M.N. Sampath Kumar (PW-2). Preetpal Singh Sodhi (complainant) and the respondent-accused reached near the scooter of the respondent-accused where the respondent-accused demanded the bribe money for handing over the copy of the agreement. Preetpal Singh Sodhi (PW-1) gave money C which the respondent-accused accepted and kept the same in the scooter's bag. The respondent-accused handed over the copy of the agreement to Preetpal Singh Sodhi (complainant). In the meanwhile, M.N. Sampath Kumar (PW-2), who was watching the whole scenario, gave a signal to the trap party. The D trap party reached immediately and apprehended the hands of the respondent-accused. The usual demonstrations were done in Taj Mahal Hotel itself, which showed that the fingers of the respondent-accused were soiled and they were dipped in the Sodium Carbonate solution. The said solution turned pink. The respondent-accused removed the currency notes from the bag E and the same were seized. The Panchnama was executed there and a search was conducted in the house of the respondent-accused, but nothing incriminating was found. On this basis, the sanction was obtained for the prosecution which was granted vide Exhibit P-15 by Shri A.K. Taneja, the Sanctioning Authority F (PW-8), and on that basis, the charge-sheet came to be filed.

3. In support of its claim, the prosecution examined Preetpal Singh (PW-1), M.N. Sampath Kumar (PW-2) and other seven witnesses including R.M. Khan (PW-7), the Investigating Officer, as also, PW-8, Sanctioning Authority. The documents were also G presented and were proved and on that basis, the trial proceeded. The defence of the respondent-accused was that of denial. He examined himself as DW-1 and contended that he was framed, more particularly, by his superior officers. He particularly pleaded that there were many discrepancies H including the discrepancy in the timing of the First Information

Report (FIR). He also pleaded that there was no question of his preparing the detailed programme and in fact, the said programme was to be prepared by Preetpal Singh Sodhi (PW-1), the contractor himself and there was no question of his obliging the complainant by preparing the said programme. He pointed out that there was no question of obliging by signing the contract because the contract was already awarded in favour of Preetpal Singh Sodhi (complainant). He, therefore, described the whole prosecution case as false. The learned Trial Judge, however, found the respondent herein guilty and he was convicted for the offence charged.

4. The respondent-accused, therefore, filed an appeal before the High Court and the High Court acquitted the respondent-accused. It is this acquittal which is challenged before us in the present case.

5. Shri Naresh Kaushik, Learned Counsel appearing on behalf of the appellant urged that the High Court has erred in allowing the appeal even when it was proved that the amount of bribe has passed from Preetpal Singh Sodhi (complainant) to the respondent-accused and the respondent-accused had accepted the same. The Learned Counsel pointed that the High Court would have raised the presumption under Section 20 of the Act and it should have been further noted by the High Court that the respondent-accused had not explained as to why he had accepted the amount, which was not his lawful deliberation. It is further argued by the Learned Counsel that while allowing the appeal, the High Court had nowhere shown as to how the Trial Court had gone wrong. The Learned Counsel further urged that the respondent-accused had no business to go to Taj Mahal Hotel for doing an official work of getting the signatures of the complainant (PW-1) and that it was strange that the official work should have been done at Taj Mahal Hotel. The Learned Counsel further urged that it was clinchingly proved by the prosecution that the bribe was demanded by the respondent-accused, who was a public servant and in pursuance of the demand, he also accepted the bribe of Rs.5,000/-. It was pointed out that the witnesses had absolutely no reason to speak against the

A respondent-accused and their disinterested testimony was bound to be accepted and was rightly accepted by the Sessions Judge and yet even without finding any fault with the evidence, the High Court chose to acquit the respondent-accused on imaginary grounds.

B 6. As against this, Shri G. Prakash Rao, Learned Counsel appearing on behalf of the defence supported the judgment of the High Court and pointed out that the story of the prosecution was extremely unnatural. He also pointed out that L.N. Das (PW-5) was inimical towards the respondent-accused, therefore, he C was framed. He further pointed out that there was absolutely no reason for the respondent-accused to demand bribe, as the contract was already awarded in favour of Preetpal Singh Sodhi (complainant) and the only remaining formality was the preparation of the programme, which had to be done by Preetpal Singh Sodhi (complainant) himself. In such circumstances, there D was no occasion for demanding any bribe as the respondent-accused was not in a position to oblige Preetpal Singh Sodhi (complainant) in any manner. Learned Counsel urged that there was no question of raising the presumption under Section 20 of the Act, as such, presumption could not be raised where the E respondent-accused was charged with the offence punishable under Section 13 (1) (d) of the Act. Lastly, the Learned Counsel urged that where two views are possible, the Court should be slow in upsetting the judgment of acquittal.

7. The High Court proceeded initially on the basis of the F story that the agreement had to be got signed by Preetpal Singh Sodhi (complainant-PW-1), the Contractor within 19 days and, therefore, L.N. Das (PW-5) had asked the respondent-accused to take the signatures of Preetpal Singh Sodhi (PW-1) on the agreement before that date. The High Court further noted that G initially the respondent-accused was hesitant to approach Preetpal Singh Sodhi (PW-1), but later on, he agreed to do so. According to the High Court, L.N. Das (PW-5) had admitted in his cross-examination that since the time of contract was likely to expire, he requested the respondent-accused to get it signed and as such, there was pressure on the part of the management H

to get the agreement signed within time. In our opinion, this theory of pressure was of no consequence and could not be viewed as helpful to the defence. Even if the contract was to be got signed by Preetpal Singh Sodhi (PW-1), the fact remains that for the purpose of contract, ultimately, the respondent-accused had to give the detailed programme of work. The signatures of Preetpal Singh Sodhi (PW-1) could have been obtained on the agreement and at that time, it was necessary that the work schedule was ready, which was to be prepared by the respondent-accused and it was for that purpose that the respondent-accused demanded the money. It must be noted here that after putting the signatures of Preetpal Singh Sodhi (complainant) on the agreement and after preparation of the work schedule, the contract would be complete and the complainant would get the benefit of huge contract worth about Rs.35 lakhs. The bribe was for this purpose. The signing of the contract, preparation of the work schedule were mere formalities. The High Court has not properly viewed at this position that the bribe was demanded for completing the contract, worth about Rs.35 lakhs.

8. The High Court further committed an error in presuming that the amount of Rs.5,000/-, which was the first installment of Rs.50,000/- was to be paid for signing the agreement and it was to be paid at Taj Mahal Hotel, Narayanguda, Hyderabad. It has clearly come in the evidence of Preetpal Singh Sodhi (PW-1) that he did not want to part with the amount of Rs.5,000/- and it was, therefore, he made a complaint (Exhibit P-3) on 27.5.1998. The evidence of Preetpal Singh Sodhi (PW-1) clearly suggests that question of payment of Rs.50,000/- as bribe money arose only after the letter dated 3.4.1998 (Exhibit P-1) was written, informing him that he was awarded the contract. Admittedly, the respondent-accused was working as a Senior Engineer (Civil) and was in charge of the work mentioned in letter dated 3.4.1998 (Exhibit P-1). This was followed by letter dated 18.5.1998 (Exhibit P-2), wherein the value of the work was mentioned. It was only after this that Preetpal Singh Sodhi (PW-1) met the respondent-accused and at that time, the respondent-accused suggested

A that the site where the work was to be executed was not available, yet he asked the complainant to cooperate with him and demanded Rs.50,000/- as bribe. The signing was to be done by Preetpal Singh Sodhi (PW-1) and if the amount was demanded only for purposes of signing, there was no question
B because Preetpal Singh Sodhi (PW-1) would have been keen to get the contract. However, at the time of signing, the detailed schedule of programme was also to be prepared by or with the cooperation of the complainant and the respondent-accused. It was, therefore, that the amount was demanded. Even the place that was fixed for payment of amount was Taj Mahal Hotel. Now,
C one wonders as to why the responsible senior officer like the respondent-accused would chose to go to Taj Mahal Hotel for doing official work of getting the contract signed. He could have easily called Preetpal Singh Sodhi (complainant) to his office and got the agreement signed. However, that did not happen and they
D mutually agreed to meet at Taj Mahal Hotel in its dining room. This is the first circumstance that the respondent-accused had failed to explain and has also remained to be considered by the High Court. The movement of the respondent-accused out of his office and going to Taj Mahal Hotel after office hours at 6'O clock
E raises accusing finger towards the intentions of the respondent-accused.

9. When Preetpal Singh Sodhi (complainant) was waiting for the respondent-accused at Taj Mahal Hotel and when the respondent-accused came to the Hotel, the respondent-accused
F asked as to whether the complainant had got the money. This could not be said to be a demand, but was merely an assurance that the money was available. It must be noted here that it took almost 3-4 hours for them to prepare the agreement and work schedule and to get the signatures. What has to be noted is that even after the signatures, the agreement was not handed over
G to Preetpal Singh Sodhi (PW-1), and instead, the respondent-accused took it near the scooter and it was there that the demand for money was made. There is undoubtedly some mix-up as to where the demand was made because it has not come specifically in the Examination-in-Chief of Preetpal Singh Sodhi

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(PW-1) that the respondent-accused demanded the money near the scooter. The Learned Counsel for the respondent-accused tried to take advantage of this situation. However, we are not impressed by this at all, as the respondent-accused had already demanded the money and even this witness mentioned about the demand of money as soon as he met the respondent-accused. The High Court, without going into the details of the evidence, has merely come to the conclusion that no demand was made. Now, if no demand was made, there was no reason for the respondent-accused to accept the money offered by the complainant. The respondent-accused cannot deny that the money was actually touched by him. There is absolutely no cross-examination on the fact that when he dipped his finger in the solution of Sodium Carbonate, same turned pink, which was clear indication that he touched the money and handled it. There is no explanation, whatsoever, of this second fact as to how the fingers of the respondent-accused were soiled with phenolphthalein. This is the second circumstance, which was a very major circumstance, that the High Court has failed to note and explain, which shows that the High Court has taken a very casual attitude. We have scanned the judgment of the High Court very carefully and find that the High Court has not, in any manner, considered the factum of solution of Sodium Carbonate turning pink when the fingers of the respondent-accused were dipped. In fact, that was a major circumstance and the most important incriminating circumstance, which was bound to be explained by the respondent-accused.

10. At this juncture, we must also express as to how the presumption was completely ignored by the High Court. Section 20 of the Act provides:-

20. Presumption where public servant accepts gratification other than legal remuneration:-

(1) 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

A 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 B 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 a C consideration which he knows to be inadequate."

(2) Not relevant.

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

It was argued, though feebly, that the presumption could not be drawn as the charge in this case was under Section 13(2) read with Section 13(1)(d) of the Act. It was pointed out by the Learned Counsel for the respondent-accused that Section F 13(1)(d) did not attract the presumption under Section 20 of the Act. What is being ignored by the Learned Counsel for the respondent-accused is that the charge was not only under Section 13(1)(d), but also under Section 7 of the Act. Section 7 of the Act is as under:-

G **7. Public Servant taking gratification other than legal remuneration in respect of an official act:-**
Whoever, being or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any H gratification whatever, other than legal remuneration, as a

motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months, but which may extend to five years and shall also be liable to fine."

Now, there can be no dispute that prosecution in this case was alleging that the respondent-accused had accepted or obtained from Preetpal Singh Sodhi (complainant), gratification, which was other than the legal remuneration as a motive or reward for signing the contract or, as the case may be, for providing the schedule of work, so as to complete that contract. Therefore, there was no question of the presumption not being there, once it was proved that the respondent-accused had accepted the illegal gratification. Now, the evidence is very clear that firstly, the fingers of the respondent-accused were found to be soiled, which could not have been so soiled had he not touched the currency notes offered by the complainant; and secondly, it was found that those very currency notes were kept in the bag attached to the scooter. Lot of criticism was made that the scooter and/or the bag were not seized, ultimately from where the money was recovered. Now, in this behalf, the evidence of Preetpal Singh Sodhi (PW-1) is clear. He specifically deposed:-

"As agreed, I paid M.O. 1 to the accused."

Now, the words "as agreed" in the deposition of the PW-1 (complainant) are extremely important, as the same signify that there was an agreement between the respondent-accused and the complainant that the complainant had agreed to pay Rs.5,000/- as bribe for the contract, its signing and for providing the schedule of work. The complainant further goes on to say that "the accused kept the money in the front bag of the scooter".

A Now, when we see the cross-examination of Preetpal Singh Sodhi (PW-1), it is clear that nothing has been asked in respect of this version. It was feebly suggested to Preetpal Singh Sodhi (PW-1) that no amount was paid before executing Exhibits P-5 to P-8 or that it was not paid inside the hotel soon after the agreement. The witness had clarified on this situation that the B amount was paid in the parking area. He very specifically mentioned in his cross-examination that he gave Rs.5,000/- with his right hand and the respondent-accused accepted the money with his right hand. It has also come out in the evidence that the amount of Rs.5,000/- was taken out of the front bag of the scooter C only after the hand wash test was completed. Some minor insignificant omissions have been brought, which were of no consequence. In the whole cross-examination, the story of demand of the respondent-accused prior to the contract and the acceptance by the respondent-accused near the scooter stand, D has not at all been demolished. This, the High Court has completely ignored. Once this story becomes acceptable, there is no other go, but to raise a presumption under Section 20 of the Act. This important provision of Section 20 was also ignored by the High Court. This was again not a case falling under Section 20(3) of the illegal gratification from being trivial, so as not to E raise presumption – inference of corruption. It was a substantial amount. Therefore, Section 20 of the Act could not have been ignored. The High Court has committed an error in ignoring this provision and ignoring the fact that the presumption had to be raised, and on that basis, it was up to the respondent-accused F to explain as to how the amount came in his possession. In our opinion, this amounts to a perverse appreciation of evidence. This is the third aspect, on which the High Court has faltered.

11. The evidence of Preetpal Singh Sodhi (complainant) was fully corroborated by the evidence of M.N. Sampath Kumar G (PW-2), who was a Panch witness and who was to accompany the complainant. Even this witness specifically says that after the signatures were obtained on Exhibits P-5 to P-8, the respondent-accused collected the books and came to the parking place, where his scooter was parked and he was followed by the H complainant and that when Preetpal Singh Sodhi (PW-1) asked

for a copy of the agreement book already signed, the respondent-accused demanded money from Preetpal Singh Sodhi (PW-1) and Preetpal Singh Sodhi (PW-1) removed M.O. 1, i.e., money from his left hand pocket. The respondent-accused collected the money and handed over the copy of the agreement through his right hand. The respondent-accused placed the money in the scooter bag and the complainant (PW-1) gave pre-arranged signal. It can be said that there is some discrepancy about the hand, by which the respondent-accused accepted the amount, but that goes into the backdrop on account of the clear evidence of R.M. Khan (PW-7), the Investigating Officer. R.M. Khan (PW-7), in his evidence, has referred to the earlier demonstration, going of Preetpal Singh Sodhi (PW-1) and M.N. Sampath Kumar (PW-2) to the Taj Mahal Hotel, the instructions given to the complainant (PW-1) and the witness and the coming of the respondent-accused at about 6'O clock. This officer was all through watching the happenings. He also then proceeds to say that Preetpal Singh Sodhi (PW-1) removed the currency notes from his pant pocket and the same were given to the respondent-accused, who took the same and kept it in the scooter bag and then the respondent-accused gave a copy of the agreement to Preetpal Singh Sodhi (PW-1). On the signal being received from M.N. Sampath Kumar (PW-2), the respondent-accused was caught and the money was recovered after the demonstration of the Sodium Carbonate solution. The cross-examination of this witness, though lengthy, is perfunctory and serves no purpose. His basic story has remained unshaken. Some insignificant contradictions as to who gave the signal were brought in the evidence of this witness, but those would not affect the otherwise credible evidence of this witness. Therefore, this was a case where the evidence of Preetpal Singh Sodhi (PW-1) was totally corroborated by the evidence of M.N. Sampath Kumar (PW-2) and R.M. Khan (PW-7). All this has been totally lost sight of by the High Court.

12. Much was said about the scooter or the scooter bag not being seized. We do not see as to how that would have helped, once it was proved that the respondent-accused had accepted the money. Merely because it was kept in the scooter by the

A respondent-accused, in our opinion, was an insignificant circumstance. The fact of the matter is that the money was recovered from the scooter bag. It would have certainly been better had the scooter and scooter bag been seized, however, in our opinion, the non-seizure of the bag and scooter will not
B affect the prosecution case.

13. Much was made of the evidence of L.N. Das (PW-5). The High Court has gone to the extent of saying that it was at the instance of L.N. Das (PW-5) that the respondent-accused was falsely implicated. We have scanned the evidence of L.N. Das
C (PW-5) very carefully, but we find nothing in the evidence of this witness to suggest the inference drawn by the High Court. The witness merely gave the background, in which the respondent-accused was asked to get the signatures and he also undoubtedly has said that one B. Ashok Kumar was kept for this work, however, since the respondent-accused was made in
D charge of the work, the respondent-accused was asked to collect the signatures, so as to get the contract completed. We do not find anything in the evidence or the cross-examination of this witness to suggest that it was at the instance of this witness that the respondent-accused was falsely implicated. The inference
E drawn by the High Court has absolutely no basis and only suggests that the High Court has read something in his evidence, which was not there at all. Evidence of A.K. Taneja (PW-8) is merely formal and nothing has been addressed to us as regards his evidence. He had given the sanction for prosecution. In fact,
F no arguments were addressed on the question of sanction.

14. The evidence of the respondent-accused is also perused by us, as much was made by the High Court of that evidence. The High Court, without even discussing the evidence in details, has gone to the extent of saying that the evidence of
G G. Premraj (respondent-accused & DW-1) has the effect of establishing the defence of the respondent-accused by preponderance of probabilities. The respondent-accused admits here in his evidence that on 27.5.1998, Preetpal Singh Sodhi (PW-1) telephoned him at about 1'O clock, asking him to come to Taj Mahal Hotel for signing the agreement. One wonders as
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to why the respondent-accused chose to accept this suggestion on the part of the Preetpal Singh Sodhi (PW-1) even if it is held to be true. Preetpal Singh Sodhi (PW-1), however, disowns telephoning the respondent-accused. The respondent-accused has raised a theory that when he returned to his scooter for proceeding after the signatures were obtained, Preetpal Singh Sodhi (PW-1) approached him and forcibly thrust the amount in his hands. Now, we fail to follow as to what could prompt Preetpal Singh Sodhi (PW-1) to thrust the money into the hands of the respondent-accused. In our opinion, his evidence was nothing, but a poor attempt to explain the change of colour of the Sodium Carbonate solution after his fingers were dipped in it. Such theory of thrusting the notes cannot be believed at all.

15. The Sessions Judge in this case, after discussing the evidence, has given cogent findings. In Para 17 of his judgment, he asked a right question as to whether the amount was accepted by the respondent-accused or was thrust in the hands of the respondent-accused. He has also addressed himself about the other contentions. He has, after the discussion, chosen to believe the evidence of Preetpal Singh Sodhi (PW-1), M.N. Sampath Kumar (PW-2) and R.M. Khan (PW-7) and has come to the conclusion that the amount was accepted. He has rightly stated that there was a meeting of minds between the respondent-accused and complainant to meet at Taj Mahal Hotel. The Sessions Judge has rightly held that there was no question of anybody having any enmity with the respondent-accused, much less on the part of the complainant and, therefore, there was no reason for these persons to falsely implicate the respondent-accused. As regards the discrepancy in the First Information Report (FIR), the Sessions Judge has rightly attributed this to the failure of memory, as the witness has deposed after 3 years. The Sessions Judge has also noted that the respondent-accused had, at no point of time, complained to anybody that the amount was thrust in his hand. We find that the judgment of the Trial Court was quite reasonable and even without raising the presumption under Section 20 of the Act, the Trial Court had inferred that the respondent-accused had committed offence under Sections 7, 13(2) read with Section 13(1)(d) of the Act.

16. We do not find, in comparison, any reasons, much less, good reasons, having been given by the High Court for its disagreeing with the judgment of the Trial Court.

17. We are quite alive to the fact that unless the judgment of acquittal tends to be perverse or unless the inferences drawn in the acquitting judgment were not at all reasonable, possibly the acquittal should not be upset. However, in this case, as we have already pointed out, there was no scope for recording of finding of acquittal.

18. For all these reasons, we are unable to agree with the impugned judgment of the High Court. We would, therefore, choose to set aside the same and restore the judgment of the Trial Court.

19. Last, but not the least, we are extremely surprised to read the last portion of the judgment of the High Court, wherein, the High Court has *honourably acquitted* the accused and directed his reinstatement as senior most Civil Engineer, Civil Department, MIDHANI with all usual retiral monetary benefits inclusive of restoration of seniority etc. with immediate retrospective effect. We wonder as to under what powers, the High Court has acted. This was certainly not the jurisdiction on the part of the High Court, which had only to find whether the respondent-accused was guilty or not of the offence alleged against him. It has come in evidence that a full-fledged departmental enquiry was conducted against the accused, wherein he was found guilty. We are shocked to see the step taken by the High Court in straightaway writing off the findings in departmental enquiry without any justification. This aberration on the part of the High Court speaks of its wholly incorrect approach.

K.K.T. Appeal allowed.