

STATE OF WEST BENGAL  
v.  
KAILASH CHANDRA PANDEY

OCTOBER 13, 2004

[D.M. DHARMADHIKARI AND A.K. MATHUR, JJ.]

*Prevention of Corruption Act, 1988—Section 7—Demand of money by way of illegal gratification by accused—Trap laid, accused apprehended and currency notes recovered from his pocket—Conviction under—Acquittal by High Court on basis of infirmities in the prosecution case—Justification of—Held: Non-signing of accused on seizure list, non-sending of currency notes and pant for Forensic Chemical Examination, non-seizure of pyjama given to accused to wear after taking the pant, money kept in the left hand pocket but hand wash taken of right hand, bills passed prior to tender of money to accused and non-production of envelope does not improbablise the prosecution case—Prosecution case based on sufficient, cogent and reliable evidence—Hence, conviction justified and order of High Court set aside.*

*Constitution of India, 1950—Article 136—Re-appreciation of evidence by appellate court—Scope of—Held: Since trial court is in a better position to appreciate evidence, appellate court should be slow in re-appreciating evidence—It should not set aside the appreciation done by trial court except for cogent reasons.*

According to the prosecution, complainant was sanctioned a cleaning contract at the International Airport for certain period. He raised the bills for payment. Respondent - Deputy Manager (Airport) demanded illegal money for passing the bills. Complainant filed a complaint. Thereafter, trap was laid and respondent - accused was apprehended and currency notes were recovered from his pocket. Charges were framed. Prosecution witnesses were examined. Trial Court convicted and sentenced the respondent under section 7 of the Prevention of Corruption Act, 1988. However, the High Court acquitted the respondent on the ground that no signature of accused was taken on seizure list; that the currency notes and pant were not sent to Forensic Laboratory for chemical examination; that the pyjama given to the accused to wear after taking the pant was not produced; that the money was kept in the left hand pocket but the hand wash was taken of the right hand; that the amount covered

A by impugned bills had already been released prior to the alleged tender of money; and that the envelope containing alleged money was not produced. Hence the present appeal.

Allowing the appeal, the Court

B HELD: 1.1. In the present case, there were no improbabilities in the prosecution case. The prosecution has led sufficient, cogent and reliable evidence to fully substantiate the allegation against the accused but the High Court was not correct in taking a very easy approach to improbabilise the prosecution case. [449-F-H]

C 1.2. With regard to the ground of non-signing of the accused on the seizure list, the Investigating Officers stated that the accused refused to sign on the seizure list. The prosecution cannot force him to append his signature on the seizure memo if he refused to sign. Therefore, just because the accused did not append the signature on the seizure memo, it cannot be a ground to improbabilise the prosecution story. [447-G-H]

D 1.3. When the currency notes which were mixed with the phenolphthalein powder were handled by the accused the hands of the accused and the pant pocket used with currency notes was washed in a water bowl and the colour of the water turned pink. The hand and pant wash which was kept in bottles were sent for chemical examination, which is sufficient to connect the accused with the commission of the crime. Just because the notes and pant were not sent for F.S.L. examination, it cannot be a ground to disbelieve the prosecution story. Furthermore, the pant of the accused was produced and exhibited in the Court and the pant has been identified by one of the prosecution witnesses. It is very strange that the pyjama which was given to the accused to wear that was not required to be seized or produced before the court because the accused could not be permitted to go naked without wearing anything since his pant was already seized. [448-A-C]

F 1.4. The entire prosecution story cannot be disbelieved on the ground that when the money was allegedly received by the right hand of the accused, G it was kept in the left hand pocket but hand wash was taken of the right hand only since such conduct of the accused is the normal course of human conduct. Furthermore, the accused has received the currency notes and after the hand wash and the left hand pocket of the trouser wash, the colour of the water turned pink, therefore, putting these two evidence together, there remains no H doubt about the prosecution case. [448-D-E]

1.5. The bills of the complainant for the given period have already been passed and payments were made prior to the tendering of the money to the accused, is not a ground to disbelieve the prosecution case. In fact, the objections were raised and deductions were made in bills and money was being demanded from the complainant so that his bills are not objected or delayed and no deduction be made in future. The money was paid to the accused primarily for an illegal purpose to facilitate smooth release of the money as per the bills. Furthermore, the allegation that the bills were passed earlier and later on the trap was arranged by the complainant who was inimically motivated and was interested in trapping the accused, cannot improbably the prosecution story. [448-F-G]

1.6. Non-production of the envelope is of no consequence. The acceptance of money by the accused is material which is more than apparent from the evidence of the prosecution witnesses that the money was recovered from the accused and the accused's hand wash and also the accused's pant pocket wash turned the water into pink colour. [448-H; 449-A, B]

*Som Parkash v. State of Punjab*, [1992] Supp. 1 SCC 428; *G.V.Nanjundiah v. State (Delhi Admn.)*, AIR (1987) SC 2402; *State of U.P. v. Jagdish Singh Malhotra*, [2001] 10 SCC 215 and *State of Maharashtra v. Pollonji Darabshaw Daruwalla*, [1987] Supp. SCC 379, distinguished.

2. The appellate court should be slow in re-appreciating the evidence. This Court time and again has emphasized that the trial court which has the occasion to see the demeanour of the witnesses, is in a better position to appreciate it, the appellate court should not lightly brush aside the appreciation done by the trial court except for cogent reasons. [450-A, B]

*The State of Punjab v. Hari Singh and Anr.*, AIR (1974) SC 1168; *Khem Karan and Ors. v. The State of U.P. and Anr.*, AIR (1974) SC 1567; *State of Rajasthan v. Bhawani and Anr.*, [2003] 7 SCC 291 and *Govt. of NCT of Delhi v. Jaspal Singh*, [2003] 10 SCC 586, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1406 of 2003.

From the Judgment and Order dated 9.12.2002 of the Calcutta High Court in C.R.A. No. 192 of 2000.

A. Subba Rao, Vishnu Sharma and Mrs. Anil Katiyar for the Appellant.

**A** Pradip Ghosh, Bijan Kumar Ghosh and G.V.R. Choudary with him for the Respondent.

The Judgment of the Court was delivered by

**B** **A.K. MATHUR, J.** This appeal is directed against the order passed by the High Court of Calcutta dated 9.2.2002 passed in C.R.A. No.192 of 2000 whereby learned Single Judge has reversed the conviction of the accused-respondent, passed by the Additional District and Sessions Judge and Special Judge, 3rd Court, Barasat, 24- Parganas (N) in Special Case No.2 of 1997, whereby learned Addl. District and Sessions Judge and Special Judge convicted the accused under section 7 of the Prevention of Corruption Act, 1988 and sentenced him to suffer rigorous imprisonment for one year and to pay a fine of Rs.1000 in default to suffer rigorous imprisonment for one month more.

**C** Brief facts which are necessary for disposal of this appeal are as follows.

**D** On May 23, 1996, one Shankar Prasad Sengupta, the proprietor of M/s. Rakshak Security Services lodged a complaint before the Superintendent of Police, Central Bureau of Investigation, Anti Corruption Branch, Calcutta stating that he was awarded a cleaning contract at New Domestic Terminal Complex at Netaji Subhash Chandra Bose International Airport, Calcutta vide award letter dated December 3, 1994 for two years with effect from December 21, 1994. As per practice, he was required to submit the bills in the Office of the Deputy General Manager (Airport) and thereafter the bills on presentation were processed by the House Keeping department functioning under the respondent. Accused-respondent was the final authority for passing of the bills for payment. It is alleged that the accused-respondent demanded illegal money for passing the bills which the complainant-Shankar Prasad Sengupta (P.W.3) had managed till May 21, 1996. P.W.3 submitted a bill for a sum of Rs.1,39,000 on May 23, 1996 and made a request to the accused-respondent to pass the said bill. Accused-respondent insisted that unless P.W.3 pays a sum of Rs.5000 he would not pass the bill. Accused-respondent directed P.W.3 to make payment of Rs.5000 on May 24, 1996 after lunch hours in his Office. As P.W.3 had no intention to pay the said amount, he lodged a written complaint before the Superintendent of Police, C.B.I., Anti Corruption Department disclosing all the details on the basis of which a complaint was registered against the accused-respondent for commission of an offence under section 7 of the Prevention of Corruption Act, 1988 and Mr. M.S. Hazari, Inspector, C.B.I. was entrusted with the investigation of the case. P.W. 3 was

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called by the Superintendent of Police, C.B.I. in his office for laying a trap. A pre-trap memo was prepared with necessary particulars. Pursuant to that pre-trap, a trap party including P.W.3 left to the Office of the accused-respondent to lay the trap and they were accompanied with two independent witnesses i.e. P.W.4-Ratan Krishna Das, an employee of Oriental Bank of Commerce and P.W.15- Sanjay Kumar, a Law Officer of the Bank along with the Investigating Officer. On the fateful day, the money was handed over by P.W.3 to the accused-respondent and he pocketed the money. Thereafter, the Investigating Officer accompanied by others entered into the room, seized the money and arrested the accused-respondent. The sanction was obtained on December 10, 1996 and after the accord of the proper sanction by the Chairman, Airports Authority of India, charge-sheet was submitted against the accused-respondent on January 31, 1997.

Accused-respondent denied the charges and pleaded that he was falsely implicated with ulterior motive. The prosecution in support of its case examined 16 witnesses and no witness was examined on behalf of the defence. The trial Judge after considering the matter, after recording the evidence and hearing both the sides found the guilt of the accused established and convicted the accused-respondent under Section 7 of the Prevention of Corruption Act and sentenced him as above said.

Aggrieved against that order, the accused-respondent preferred an appeal before the High Court. Learned Single Judge considering the matter and hearing the parties, acquitted the accused of all the charges on the grounds that the currency notes were not sent to the Forensic Laboratory for chemical examination, the pyjama which was given to the accused to wear after taking the pant, the same was not produced; that the money was kept in the left hand pocket but the hand wash was taken of the right hand; the amount covered by the impugned bills had already been released prior to the alleged tender of the money and the envelope containing the alleged money was not produced. Therefore, on the basis of these infirmities, learned Single Judge of the High Court acquitted the accused-respondent of all the charges. Aggrieved against this order of the learned Single Judge of the High Court of Calcutta, the present appeal has been filed by the State of West Bengal represented by the C.B.I., S.P.E.

We have heard learned counsel for the parties and perused the records. The main witness in the present case is P.W.3- Shankar Prasad Sengupta to whom the cleaning contract for the Calcutta Airport was sanctioned for a

A period with effect from December 21, 1994 to December 20, 1996. He has deposed that the bill amount for March, 1996 was received by him late while the bill amount for the month of April, 1996 was reduced as there was reduction towards poor performance. At the relevant point of time Shri Kailash Pandey was the Deputy General Manager (Airport) at Calcutta Airport. He stated that after this deduction he met the General Manager and the Airport Director, Calcutta but without any relief. Therefore, again he approached the Deputy General Manager, Airport and he told him that he is to be paid Rs.5000 per month for a permanent relief against any future deduction from any bill and for getting the payment in time. He deposed that he did not agree to the illegal demand and he approached the C.B.I. for taking their protection. He filed a written complaint before the concerned Superintendent of Police, C.B.I. at his Office at Nizam Palace, Calcutta. It is alleged that he gave a sum of Rs.5000 to the Superintendent of Police, C.B.I. on May 24, 1996 and some chemicals were mixed with the currency notes and were handed over to him. He along with some C.B.I. Officers went to the Airport Authority of India, Calcutta and two other outsiders also accompanied them to the Head Officer and one of them was, Sanjay Kumar (P.W.15), an employee of Oriental Bank of Commerce. The numbers of the currency notes were noted in a sheet of paper in the Office of the S.P.C.B.I. and he put his signature on the said sheet of papers where numbers of the currency notes were noted down. All these currency notes were produced during the trial and the numbers of the currency notes tallied with the aforesaid numbers noted except item No.10. Thereafter, it is alleged that he went to the chamber of Deputy General Manager along with Sanjay Kumar and another person and he introduced the two persons to Mr. Pandey as his friend cum-partners of the business and he told him that he had brought the money for a total sum of Rs.5000 and then he handed over the ten currency notes of Rs.500 each for a total amount of Rs.5000 to Mr. Pandey and Mr. Pandey received the said amount and kept the same in his pocket. It is alleged that after handing over the said money to Mr. Pandey he came out of the chambers of Mr. Pandey where the C.B.I. Officers along with others were already present and intimated him about the delivery of the notes. Thereafter, Mr. Pandey was apprehended and currency notes were recovered from the pocket of Mr. Pandey. The C.B.I. Officers prepared necessary papers and he put his signature there. Thereafter, the C.B.I. Officer brought some chemicals in glass bottles and the hands of Mr. Pandey were washed by the C.B.I. Officers by the chemical of the said bottle. After washing the hands of Mr. Pandey the chemicals were preserved in another glass bottle. Similarly pocket of pant was washed and the water was kept in another glass bottle. All the bottles were sealed and labels were pasted on

the same and he put his signature on those bottles. The currency notes were wrapped and sealed. P.W.3 was cross-examined at length. But nothing substantial was brought out so as to dislodge his testimony.

The next witness in this case is P.W.4-Ratan Krishna Das who was one of the eye witnesses. He was an Officer of Oriental Bank of Commerce, Bowbazar Branch. On the direction of his higher authority he had to go to the Office of the Superintendent of Police, C.B.I. on May 24, 1996 and he was accompanied with one Mr. Sanjay Kumar who was the Law Officer of that Bank. It is alleged that there he met Shri R.K. Sarkar who was the Inspector, C.B.I. and another person named, Shri M.S. Hazari who was also an Inspector, C.B.I. and he made enquiry as to the reason for calling him and he was told that one Shankar Prasad Sengupta had filed a written complaint against some Officer of Airport Authority and they have to accompany them, as demand raised by accused-respondent, Kailash Pandey was unauthorized money in relation to the bill of Shankar Prasad Sengupta. He deposed that the C.B.I. Officers asked Shankar Prasad Sengupta to produce the currency notes which were to be offered to Mr. Pandey. and thereto Shri Sengupta produced ten currency notes of Rs.500 denomination and the C.B.I. Officers coated the same with some powder and handed over the same again to Shankar Sengupta and advised him to offer the said money to Mr. Pandey. It is further deposed that he along with the C.B.I. Officers, Sanjay Kumar and Shankar Prasad Sengupta left for Calcutta Airport in a vehicle and Sanjay Kumar was instructed to remain with Shankar Prasad Sengupta as a witness before offering the currency notes to Mr. Pandey and he was asked by the C.B.I. Officers to wait with them in a corner outside the chamber of Mr. Pandey. It is alleged that before starting for the Calcutta Airport, the numbers of the currency notes were also noted down and signatures were also obtained on the pre-trap memorandum. It is deposed that before proceeding to Calcutta Airport he was asked to handle a white paper and thereafter he was asked to wash his hands with some liquid and after that the liquid became pink colour and the said pink colour was preserved in the glass bottle and marked "A". The said bottle was produced in the Court. Shankar Prasad Sengupta accompanied with Sanjay Kumar went to the Airport in the chamber of Shri Pandey and they were asked to give a signal by touching their forehead after coming out of the chamber of Mr. Pandey as a signal that the money has been handed over. It is alleged that Shankar Prasad Sengupta and Sanjay Kumar came out and gave the signal and the same was noticed by him along with the C.B.I. Officers. On entering the chamber of Mr. Pandey, the C.B.I. Officers disclosed their identity and told him that he has received money from Shankar Prasad Sengupta but

- A** Shri Pandey refused the same. Thereafter, the C.B.I. Officers got the hands of Shri Pandey washed with water in a pot and it was found that the said water turned into pink colour and the said water was kept in a glass bottle which was marked "B". Then the C.B.I. officers again asked Shri Pandey to bring out the said currency notes and then Shri Pandey himself brought out the money from the left pocket of his pant and handed over the same to the
- B** C.B.I. Officers. The pant of Shri Pandey was grey colour and Shri Pandey was asked to change his pant there and he was given a pyjama to wear. Subsequently, the left pocket of the pant of Shri Pandey was washed and the said washed water also turned pink. The said water was also preserved in a glass bottle marked as "C". Thereafter, the currency notes were seized and
- C** seizure list was prepared and his signature was obtained on it. The glass bottles which contained the hand wash of Shri Pandey that turned pink as well as the pink colour liquid obtained after washing of the left pocket of the pant of Shri Pandey were sealed, and labels were affixed on the same and his signature was obtained. It is alleged that the trouser i.e. the pant of Shri Pandey was also seized.
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- The next witness in this connection is P.W.15, Shri Sanjay Kumar. He was a Law Officer of Central Bank of India. At the relevant time, he was posted at Oriental Bank of Commerce, Regional Office, Calcutta as a Law Officer. The Regional Manager directed him to go to C.B.I. Office at Nizam Palace, Calcutta and he went there and he was called at the S.P.'s Chamber.
- E** There he was introduced by the C.B.I. Officers with one Mr. Sengupta and he was told that a trap was being arranged at the International Airport at Calcutta in respect of bribe being given to some Officer as he demanded money from Shri Sengupta. He was explained as to how the trap was to be laid. Currency notes were given and their numbers were noted by the C.B.I.
- F** Officers. Thereafter, some chemical powder were put on the currency notes. He further deposed that he was told that when this powder coated notes were touched by any person and his hand is washed in water, the water would turn pink and a demonstration was given there. Thereafter, he along with others proceeded to the Calcutta Airport and they were instructed that Shri Sengupta would hand over the money to the concerned officer in his room and signal
- G** was to be given by touching the head by right hand and that would signal that the money has been accepted. It is alleged that he and Shri Sengupta thereafter entered into the room of Shri Pandey and at that time a person was also standing there. It is alleged that meanwhile that person left at that time. Shri Sengupta had some conversation with Shri Pandey and thereafter, he
- H** handed over the currency notes to Shri Pandey and Shri Pandey put the



money in his trouser pocket and then both of them came out. After coming out of the room a signal was given by Shri Sengupta. All the C.B.I. Officers standing in the corridor, then rushed to the Office of Shri Pandey and trapped him by stating that he had taken the money and he was asked to bring the same out which he first denied to have received the currency notes and on much persuasion all the currency notes were brought out from his trouser pocket. The trouser pocket of Shri Pandey was washed in a tap flowing water and the colour of the water turned pink. The pink colour water was preserved in a glass bottle by the C.B.I. Officers and the same was duly sealed. A paper was pasted on the glass bottle and the signature obtained. Currency notes were tallied with the numbers noted by the C.B.I. Officers and the numbers tallied. The pant which was worn by the D.G.M. was also seized and on seizure memo his signature was obtained and that trouser was identified by this witness in the Court and the same is marked as Mat. Ext.V. It is also deposed that the currency notes, numbers of which were noted at the C.B.I. Office tallied with the notes which were recovered and there was only one mistake in respect of item No.10. It is also clarified that in the list of the currency notes there is only a discrepancy with regard to one currency note which is written as CA though it is actually CE but the number of the notes tallied with the notes which were seized. It is alleged that after the trap operation a trap memorandum was prepared by the C.B.I. Officer and his signature was obtained. He was also cross-examined at length and he was confronted that whether he was offered any entry pass for entering into the airport or not. He admitted that he did not take any entry pass as he was accompanied along with the C.B.I. Officials. He admitted that when they entered into the chamber of the Deputy General Manager, Airport, he was having conversation with some other person. But that person left immediately after he entered the chamber. He also admitted that after they came out they signaled to the C.B.I. Officials that the money has been delivered. The D.G.M., Shri Pandey also came out of his chamber as he rushed to the chamber for conference. He also deposed that after receipt of the money he walked in the corridor before the C.B.I. Officers who were waiting in the corridor and entered the conference room. He denied the suggestion that no trouser was seized from the accused-respondent at the time of trap. He was also put to lengthy cross-examination.

P.W.16-Manoranjan Singh Hazari is the Inspector, C.B.I. He deposed that on written complaint he registered a case against Shri K.Pandey and requisitioned two witnesses from the Oriental Bank of Commerce, Regional Office at Calcutta and on his requisition these two witnesses i.e. Shri R.K. Das

A and Shri Sanjay Kumar were called. They were all explained about the trap procedure and the numbers of currency notes which were given by Shri Sengupta, were also noted and a list was prepared. The currency notes were put to phenolphthalein powder. Then the trap memorandum was prepared. All the currency notes were given to Shri Sengupta and they were asked to deliver the currency notes to the accused. Thereafter, they gave a signal that in fact the notes were handed to Shri Pandey. On signal they went there and the currency notes were recovered and the hands of accused-respondent were washed in the soda water which was already missed with soda. The colour of the water turned into pink and the said water was kept in a glass bottle. That bottle was sealed and that was marked as Ext."B" and signatures of the persons were obtained. Thereafter, the money was brought out and seized from the left side pocket of the full pant worn by Shri Pandey. The number of the said currency notes was compared with the numbers noted in the pre-trap memo in presence of the witnesses. Thereafter, a search cum seizure list was prepared, currency notes were sealed, signature of the witnesses were also appended. Subsequently, post trap memorandum was prepared. Thereafter, a pyjama was arranged and the accused was asked to take out his pant and pyjama was handed over to him. Thereafter, the full pant was handed over and the pocket in which the trap money was kept was washed in another bowl of water and accordingly, the colour of the water also turned pink and the said bowl water was kept in another bottle which was duly sealed and labelled. The trouser of the accused was also seized. Thereafter, the three sealed bottles containing pink colour solution to the C.F.S.L., Calcutta and their report was received. After necessary formalities the challan was filed.

This is how the prosecution has substantiated its case with reference to oral evidence as well as documentary evidence. The Personal Assistant of the accused was also examined as P.W.5 i.e. Debartha Munshi. He deposed that he was at the relevant time in his chamber and came to know about the trap arranged against the D.G.M. He had no occasion to go through the bills. He deposed that it is not possible to state whether the bill of M/s. Rakshak Security Services for the month of April, 1996 was attached with any forwarding letter. He deposed that Shri Sengupta never came to him to ascertain the position of his bills. He also supported that at the time Shri Sengupta came, a representative of Singapore Airlines was inside the chamber of D.G.M. He has also narrated about the incident which has happened. P.W.6, Ambar Kr. Mondal was Deputy Manager (Finance) Indian Airlines. P.W.7 is Mortyajit Pal, He has deposed that he was Accounts Manager and the bills are presented H by the contractors. He deposed that the bills of M/s. Rakshak Security

Services i.e. of Shri Sengupta for the period from September, 1995 to March, 1996 were seized by the C.B.I. P.W.8 is A.G.II, F.C. at the Airport Authority and he used to prepare the bills on the endorsement of the Accounts Manager as per the Rules. He deposed that he did not know Shri Shankar Prasad Sengupta as being one of the contractors. He admitted that in the bill for the month of April, 1996, Rs. 1,03,316 was claimed for labour charges while Rs. 8,701 was claimed in respect of payment to the supervisors and he cannot say whether in the wage sheet the disbursement of Rs. 96, 822.85 p. was done in total in respect of payment to labourers and supervisors He deposed that the same needs arithmetical calculation and since the said wage sheets do not contain in running total of each page, he cannot say whether there is a fraudulent claim of Rs.15,194.15 P. P.W.9 was the House Keeping staff of Airport. He deposed that cleaning operation was being done under his supervision. P.W.10 is the Additional General Manager (G.F.S.). He deposed that he was the Vigilance Officer and he did not receive any complaint against Shri Kailash Pandey. P.W.11 is the Assistant Law Manager of Calcutta Airport. P.W.12 is U.R. Khaledkar, Senior Manager in the Airport. P.W.13, is Prasun Kr. Mitra who was Inspector, C.B.I. He deposed about the formalities done at the trap stage. He deposed that he was summoned in the chambers of Shri R.K. Sarkar, the then D.S.P., C.B.I., and he came to know about the trap. He also narrated about the handing of the currency notes by Shri Sengupta and the said notes were coated with the phenolphthalein powder which turned pink on wash, about the pre-trap and how the hands of the witnesses were also washed and all other details which have already been deposed by other witnesses.

Therefore, a survey of this evidence shows that a trap was laid and how the currency notes were seized from the accused. On this evidence, the trial court convicted the accused but the appellate court i.e. the learned Single Judge reversed the finding for the reasons mentioned above. We will examine each of the reasons given by learned Single Judge of High Court to find out whether they are substantial or not so as to render the prosecution story improbable. The first reason given by Learned Single Judge was that no signature of the accused was taken on the seizure list. It has been stated by the prosecution witnesses i.e. by the Investigating Officers that the accused refused to sign on the seizure list. No accused can be forced to put his signature and the prosecution cannot force him to append his signature on the seizure memo if he refused to sign. Therefore, just because the accused did not append the signature on the seizure memo that cannot be a ground to improbabilise the prosecution story. Similarly, another reason assigned by

A the learned Single Judge was that the currency notes and pant of the accused were not sent to F.S.L. for chemical examination. When the currency notes which were mixed with the phenolphthalein powder were handled by the accused the hands of the accused was washed in a water bowl, the colour of the water turned pink. Likewise, the pant pocket of the accused was also washed and the colour of the water turned into pink and the hand and pant wash which was kept in bottles were sent for chemical examination, that is sufficient to connect the accused with the commission of the crime. Just because the notes were not sent for F.S.L. examination, it cannot be a ground to disbelieve the prosecution story. The pant of the accused was produced and exhibited in the Court and the pant has been identified by P.W.15, Sanjay Kumar as Ext.V. It is very strange that the pyjama which was given to the accused to wear that was not required to be seized or produced before the Court because the accused could not be permitted to go naked without wearing anything since his pant was already seized. Therefore, non-seizure of the pyjama is not fatal to the prosecution. Another ground has been given that when the money was allegedly received by the right hand of the accused, how it was kept in the left hand pocket but hand wash was taken of the right hand only. This is no reason to disbelieve the entire prosecution story when a man accepts anything in the right hand in normal course of human conduct and if he has kept the money in the left hand pocket the prosecution cannot be held responsible. The accused has received the currency notes and the hand wash of the water turned into pink and the left hand pocket of the trouser was also washed and the colour of the water also turned into pink, therefore, putting these two evidence together, there remains no doubt about the prosecution case. It was submitted by learned counsel for the respondent that the bills of the complainant for the period in question have already been passed and payments made. That may be so, but this is not a ground to disbelieve the prosecution case. In fact, the objections were raised and deductions were made in bills and money was being demanded from Shri Sengupta so that his bills are not objected or delayed and no deduction be made in future. The money was paid to the accused for the safe passage of his bills. Therefore, nothing turns on this ground that the bills were passed prior to the tendering of the money to the accused. It was only meant to facilitate smooth release of the money as per the bills. Therefore, it is not a ground to disbelieve the prosecution story that the bills in question were passed prior to the alleged tender of the money to the accused. Lastly, a very vague ground has been given by learned Single Judge that the envelope which contained the currency notes had not been produced. Nothing turns on non-production of the envelope. What is material is the acceptance of

money by the accused which is more than apparent from the evidence of the prosecution witnesses that the money was recovered from the accused and the accused's hand which accepted the currency notes was washed and the hand wash turned in to pink colour water and likewise the accused's pant pocket which was washed, the water also turned into pink. Therefore, from the chain of circumstances, the prosecution story stands fully substantiated.

Learned counsel for the accused-respondent has tried to show some minor discrepancy in the statement of the witnesses that whether the money was handed over in presence of one representative of Singapore Airline and he has not been produced. P.W.5- Debarata Munshi (P.A.) says that he did not know whether these persons met the accused in his chamber or not. It is alleged that the bills were passed earlier and later on the trap was arranged on the basis of the complaint by Shri Sengupta and the complainant was inimically motivated. The complainant was interested in trapping the accused. All these cosmetic contradictions cannot improbablise the prosecution story. A similar attempt was made to highlight such trifle contradiction in written submissions. The fact of the matter is that the money was accepted by the accused from the complainant and it was recovered by the Investigating Officer and the money was paid primarily for an illegal purpose i.e. to facilitate the passing of the bills of P.W.3, Shankar Prasad Sengupta and not to deduct amount from the bills. Therefore, under these circumstances, we are of not correct.

Our attention was also invited to the decisions of this Court in the case of *Som Parkash v. State of Punjab* reported in [1992] Supp.1 SCC 428; in the case of *G.V. Nanjundiah v. State (Delhi Admn.)* reported in AIR (1987) SC 2402; in the case of *State of U.P. v. Jagdish Singh Malhotra* reported in [2001] 10 SCC 215 and in the case of *State of Maharashtra v. Pollonji Darabshaw Daruwalla* reported in [1987] Supp. SCC 379. All these cases are distinguishable on the facts as in all the cases some peculiar facts were found which improbablises the case of the prosecution. But in the present case, after examining the whole case we are convinced that there was no improbabilities in the prosecution case. The prosecution has led sufficient and cogent evidence to substantiate the allegation against the accused but unfortunately the learned Single Judge of the High Court took a very easy approach and picked a small hole in the prosecution story so as to improbablise the same which, in our opinion, was not correct. We are satisfied that sufficient, cogent and reliable evidence is available on record which fully established the guilt of the accused.

A It is needless to reiterate that the appellate court should be slow in reappreciating the evidence. This Court time and again has emphasized that the trial court which has the occasion to see the demeanour of the witnesses and it is in a better position to appreciate it, the appellate court should not lightly brush aside the appreciation done by the trial court except for cogent reasons. In this connection, a reference may be made to a decision of this Court in the case of *The State of Punjab v. Hari Singh and Anr.* reported in AIR (1974) SC 1168, wherein Their Lordships have observed as follows:

C “Supreme Court’s power of interference under Article 136 with judgments of acquittal is not exercised on principles which are different from those adopted by it in dealing with convictions. It is a principle, common to all criminal appeals by special leave, that the Supreme Court will refrain from substituting its own views about the appreciation of evidence if the judgment of the High Court is based on one of two alternative views each of which was reasonably open to the High Court to accept. If, however, the High Court’s approach is vitiated by some basically erroneous apparent assumption or it adopts reasoning which, on the face of it, is unsound, it may become the duty of the Supreme Court, to prevent a miscarriage of justice, to interfere with an order whether it be of conviction or of acquittal.”

E Similarly, in the case of *Khem Karan and Ors. v. The State of U.P. and Anr.* reported in AIR (1974) SC 1567 it was observed as follows:

F “Further, neither mere possibilities nor remote probabilities nor mere doubts which are not reasonable can, without danger to the administration of justice, be the foundation of the acquittal of an accused person, if there is otherwise fairly credible testimony. If a trial court’s judgment verges on the perverse, the appellate court has a duty to set the evaluation right and pass a proper order.”

G Similarly, in the case of *State of Rajasthan v. Bhawani and Anr.* reported in [2003] 7 SCC 291, the appellate court reversed the finding of the trial court without considering and taking into account the testimony of eyewitnesses. Their Lordships after appreciation of the evidence reversed the order of the High Court and maintained the order of conviction of the trial court. Their Lordships observed that notwithstanding the inconsistencies, exaggerations or embellishments, the eyewitnesses account has to be accepted that clinches the case of the prosecution.

H

In the case of *Govt. of NCT of Delhi v. Jaspal Singh* reported in [2003] 10 SCC 586, Their Lordships reversed the order of acquittal passed by the High Court and convicted the accused on the basis of clinching, truthful and cogent evidence proving that a co-accused was a party to the common design of other accused who stood convicted by the court below and Their Lordships held that the confession of the co-accused is satisfactorily corroborated by the witnesses. A B

In view of the discussions made above, we allow this appeal and set aside the judgment and order dated December 9, 2002 of learned Single Judge of the High Court passed in C.R.A. No. 192 of 2000 and affirm the conviction and sentence passed by the trial court. The accused-respondent is on bail, his bail bonds are cancelled and he is directed to surrender to serve out the sentence and in case, he fails to surrender within one month from today, then it will be open to the Superintendent, C.B.I. to arrest him and to send him to jail to serve out the remaining part of the sentence. C

N.J.

Appeal allowed.