

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**



OA/351/00189/2018

Date of Order: 12.4.2021



Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. Tarun Shridhar, Administrative Member

Shri Mahesh Ram,
S/o- Late Jagat Ram,
R/o Brichgunj, Port Blair,
South Andaman,
Port Blair-744103.
.....Applicant

Versus

1. The Union of India
Service through the Secretary,
Ministry of Home Affairs,
Department of Police,
New Delhi-110108.

2. The Lieutenant Governor,
Andaman & Nicobar Islands,
Raj Niwas,
Port Blair-744101.

3. The Director General of Police,
Andaman & Nicobar Islands,
Police Headquarter,
Port Blair-744101.

.....Respondents

For the Applicants : Mr. G.B.Kumar, Counsel

For the Respondents : Mr. A.Prasanth, Counsel

ORDER

BIDISHA BANERJEE, MEMBER (J):

This O.A. has been preferred to seek the following reliefs:

"(a) To set aside and quash the disciplinary inquiry initiated against the applicant vide Memorandum No. DGP/DE-

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he year 2002, he was promoted to the post of Head Constable and in 2008 he was promoted to the post of Assistant Sub Inspector. In 2012, he was further promoted to the post of Sub Inspector under Respondent No.3. While he was posted under the Traffic Unit at Port Blair, on 21.10.2013 he got entangled in a bribery case. On being caught red-handed on 21.10.2013 with the bribe money by a Trap Team, on the allegation that he demanded Rs. 5000/- from one Shri V.Kathiresan, a criminal case was initiated against him. After lodging of the F.I.R. he was suspended from service. A preliminary inquiry was conducted by Shri Alok Kumar, the Deputy Superintendent of Police, SDPO, Havelock. On 24.01.2014, a preliminary inquiry report was submitted wherein the statements of the following stood recorded:

- (i) Complainant, Shri V. Kathiresan, S/o Veerapathiran, R/O NayaGaon, Port Blair.
- (ii) Insp. V. Daniel, SHO PS Anti-Corruption.
- (iii) SI Pritam Behari, PS Anti-Corruption.
- (iv) ASI Rakesh Singh SB Unit, Port Blair.
- (v) HC/382 Budh Bahadur, PS Anti-Corruption.
- (vi) HC/2109 Sadama Maurya, PS Anti-Corruption.
- (vii) HGC P Khalid, PS Anti-Corruption.
- (viii) PC/ 1025 T. Nagendra Kumar, PS Anti-Corruption.
- (ix) PC/ 1978 S.C. Tripathi, PS Anti-Corruption.
- (x) Mahesh Ram, SI (U/s), Police Line, Port Blair.

- (xi) PC/2079 G. Ravi, Traffic Branch, PS Aberdeen. found to have
 (xii) PC/2426 Jitender Singh Bhaduria, Traffic Branch, PS Aberdeen.
 (xiii) PC/2621 Karvna Kant Pandey, Traffic Branch, PS Aberdeen.
 (xiv) PC/2843 Pandiya Raja, Traffic Branch, PS Aberdeen."



The independent witnesses, who were present during the trap conducted by the Trap Team, viz. Shri R.Raji and Shri M.V.Ramesan, government servants, were not asked to depose during preliminary inquiry. Shri Alok Kumar had examined 13 police personnel, subordinate to him, and recorded the statement of the complainant. He came to a finding that the applicant accepted Rs. 5000/- as bribe money and was caught red-handedly by Anti-Corruption Team and that he was guilty of grave mis-conduct/dishonest intention and was found to have committed dereliction in discharge of official duties.

On self-same cause of action, on 18.02.2014, the respondent No.3 being the Disciplinary Authority issued a memorandum of charge relying upon the statements of 12 witnesses; namely the following:

- "(i) Insp. V. Daniel, SHO PS Anti-Corruption.
 (ii) SI Pritam Behari, PS Anti-Corruption.
 (iii) ASI Rakesh Singh SB (CID).
 (iv) Shri P. Khalid (HGC), Anti-Corruption.
 (v) HC/382 Budh Bahadur, PS Anti-Corruption.
 (vi) HC/2109 Sudama Maurya, PS Anti-Corruption.
 (vii) PC/1978 S.C. Tripathi, PS Anti-Corruption.
 (viii) PC/2079 G. Ravi, Traffic Branch, PS Aberdeen.
 (ix) PC/2426 Jitender Singh Bhaduria, Traffic Branch.
 (x) PC/2621 Karvna Kant Pandey, Traffic Branch.
 (xi) PC/2843 Pandiya Raja, Traffic Branch.
 (xii) Shri V. Kathiresan S/o late Veerapathiram."

The applicant replied to the charge memo denying the allegations and requested supply of all documents. On 31.03.2014, the applicant prayed for stay of the disciplinary proceedings during pendency of the criminal case as the charges levelled against him vide memo dated 18.02.2014 emerged from the

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same set of facts and it was based on the same set of witnesses as in criminal case. He urged mentioned that any disclosure of his defence during the departmental proceedings would adversely affect the outcome of criminal proceedings. Respondent No.3 vide a memo dated 24.04.2014 rejected his representation without any reasons and directed the applicant to co-operate in the disciplinary proceedings. Aggrieved and dissatisfied, the applicant preferred O.A. No. 72/A&N/2014 seeking quashing of the rejection order.

On 25.06.2014 when the matter was taken up by this Tribunal, the respondents were given an opportunity to file their reply. Challenging the order dated 25.06.2014, the applicant preferred a writ petition, being WPCT No. 176/2014, before the Hon'ble High Court. Vide order dated 08.07.2014, Hon'ble High Court refused to interfere with the order dated 25.06.2014 of this Tribunal as no plausible reason to interfere with the said order was found. During pendency of the O.A., respondent No.3 carried on with the disciplinary proceedings and examined 13 witnesses.

Applicant all along recorded his objection and refused to cross-examine the witnesses on the ground that his challenge to the rejection order dated 24.04.2014 was pending before the Tribunal. On 18.11.2014, the said O.A. application numbered O.A. 72/A&N/2014 was taken up for final hearing when this Tribunal passed the following orders.

"7. It transpires from the decisions referred to hereinabove, that the right of a delinquent to seek stay of departmental proceedings during pendency of criminal proceeding, where (i) charge is grave in nature and (ii) where both the proceedings are based on same set of facts and evidence, is well recognised. Hon'ble Apex Court has held in no uncertain terms that stay of departmental

proceedings in such cases would be the "desirable" or even "advisable" course.

8. The applicant has prayed for stay of the departmental proceeding with reasons, which is however, not disposed of vide impugned order giving reasons why the stay could not be granted in such view of the matter, we are of the considered opinion that justice would be met if we remand the matter back to the Disciplinary Authority to consider the prayer in the light of the aforesaid decisions and pass a reasoned and speaking order."



The said order dated 18.11.2014 was not challenged before any higher forum and, therefore, attained finality.

3. Although, it was imperative from the respondents to issue a reasoned and speaking order indicating why the applicant would not deserve stay of departmental proceedings pending criminal trial applying the law laid down in the decisions relied upon, respondent No.3 once again on 15.01.2015 rejected his prayer. While doing so, the said respondent, however, came to a definite finding as follows:

- (i) All the witnesses relied in criminal case and in the departmental proceedings were identical.
- (ii) The allegation of charge against the applicant was grave in nature.
- (iii) The proceeding was based on documents collected during preliminary inquiry and hardly required any cross-examination.

4. The applicant assailed the memo dated 15.01.2015 in O.A. 07/2015. Despite pendency of the said O.A., respondent No.3 continued with the disciplinary proceedings and even agreed with the findings of the Inquiry Officer that the charge against the applicant was proved and in terms of provisions of Andaman & Nicobar Police Manual, 1963, the applicant deserved punishment of

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dismissal from service. A show cause notice was issued to be answered within 15 days, to inflict the punishment of dismissal from service. In response to the said show cause notice, on 02.06.2015 the applicant submitted his reply denying the contents of the show cause and requested the authority not to proceed with the departmental proceedings till disposal of the criminal case.



5. A Misc. Application incorporating the show cause notice dated 26.05.2015 with the O.A. No. 07/2015 was taken up for hearing. On 02.07.2015, upon hearing the parties, this Tribunal came to a finding that there were inbuilt safeguards in the statutory rules itself and hence question of entertaining this O.A., at this stage, even before the applicant exhausted the statutory remedy did not arise and that any adverse order could be challenged before the Appellate Authority and thereafter before the Revisional Authority whereafter he can prefer an O.A. The O.A. was thus dismissed.

6. Vide impugned order Book No. 6742 dated 24.09.2015, the respondent No.3 dismissed the applicant from Andaman and Nicobar Police. His balance of pay and allowances stood forfeited to the government. A statutory appeal was preferred before the Appellate Authority, being respondent No.2, under Section 9.16 of A&N (Police) Manual 1963 read with Rule 23 of the CCS(CCA) Rules, 1965.

The Appellate Authority vide order No. 410 dated 21.12.2016 affirmed the penalty order passed by the Disciplinary Authority allegedly in a mechanical manner. The orders of the Appellate and Disciplinary Authority are under challenge in the present O.A. along with the memorandum of charges dated 18.02.2014.

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7. The gravamen of indictment against the applicant is as under:

"That, on 21/10/2013 S.I. Mahesh Ram attached with Traffic Unit was caught red handed with the bribe money of Rs. 5000/- by the Trap team of P.S. Anti-Corruption, upon which he was arrested and remanded to judicial custody.

"This such act on the part S.I. Mahesh Ram, (U/S) is most unbecoming of a member of Police Force which constitutes grave misconduct & gross indiscipline and is in contravention of the mandatory provision under Rule 8.35, 8.37, 8.45, 8.46 and 8.47 of A&N: Police Manual, 1963 rendering him liable for punishment under Rule 9.3 of the said Manual."



8. The grounds of challenge *inter alia* are as follows:

- (i) That, the independent witnesses, viz. Shri R.Raji and Shri M.V.Ramesan, who were the part and parcel of the Trap Team were not examined in course of the inquiry.
- (ii) The said two independent witnesses were examined in the criminal trial but they did not support the prosecution case.
- (iii) The complainant, being Shri V.Kathiresan, during the criminal trial refused to identify the applicant or to corroborate his written complaint.
- (iv) Under Section 7 and 13 of the Prevention of Corruption Act, 1988, no conviction can be based on the deposition of the complainant if the independent witnesses did not corroborate the prosecution case.
- (v) There is acquittal in the criminal case on 20.02.2019 by the Special Judge.
- (vi) The charge in a disciplinary proceedings has to be proved on the

basis of preponderance of probability.

- (vii) The punishment of dismissal from service is disproportionate to the allegation levelled.



In support of his contention, Ld. Counsel for the applicant would rely on the following decisions.

- (i) *Moni Shankar - versus - Union of India and another*, 2008 (3) SCC 484.
- (ii) *M.V. Bijlani - vs - Union of India and others*, 2006 (5) SCC 88.
- (iii) *Bilaspur Raipur Kshetriya Gramin Bank and another - vs - Madalal Tandon*, 2015 (O) AIR (SC) 2876, 2015 (8) SCC 461.
- (iv) *Chairman, LIC of India and others - vs - A. Masilamani*, 2013 (6) SCC 530.
- (v) *Commissioner of Police, Delhi & others - vs - Jai Bhagwan* - Civil Appeal No. 4213 of 2011, 2011 (6) SCC 376.
- (vi) *Krishnan Chander - versus - State of Delhi* - Criminal Appeal No. 14 of 2016 - 2016 O Supreme (SC) 13.
- (vii) *M.K. Harshan - versus - State of Kerala*, AIR 1995 SC 2178, 1996 (2) SCC 720.
- (viii) *Banarasi Dass - versus - State of Haryana* - Criminal Appeal No. 630 of 2003 - 2010 O Supreme (SC) 295.
- (ix) *State of U.P. - vs - Ram Asrey* - Criminal Appeal No. 23 of 1988 - 1990 SCC (Cri) 604.
- (x) *Meena Balwant Hemke - vs - State of Maharashtra* - Criminal Appeal No. 449 of 1995 - AIR 2000 SC 3377.
- (xi) ANDHRA PRADESH HIGH COURT,
Sanga Reddy Ananda Reddy - vs - The State of Andhra Pradesh represented its District Inspector of Police Kurnool Range - Criminal Appeal No. 1250 of 2003 - 09.03.2011.
- (xii) HIGH COURT OF JHARKHAND
Suresh Prasad Singh - vs - The Central Bureau of Investigation - Criminal Appeal No. 512 of 2006 - 2012 O Supreme (Jhk) 1209 (14.08.2012).
- (xiii) PUNJAB AND HARYANA HIGH COURT
Jagdish Chander - vs - State of Haryana - Criminal Appeal No. 1619-SB of 2003 (30.01.2013).

9. The respondents have not used any written arguments. In their reply, they have simply reiterated the facts. They have made no attempt to cite any contrary view of the Hon'ble Apex Court in regard to the allegation of the

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applicant that not affording opportunity to cross-examine the independent witnesses of the Trap Team would vitiate the proceedings and the honourable acquittal by the criminal court would have a bearing on the departmental proceedings.



10. We heard Ld. Counsels and perused the materials on record.

11. We discern the following:

(i) Disciplinary Authority having already rejected the prayer of stay of proceedings, pending criminal trial, was free to proceed in departmental proceedings. But, that did not allow the Disciplinary Authority to conclude the proceedings even without examining the independent witnesses of the Trap Team that lead to initiation of the departmental proceedings.

(ii) Non-examination of the complainant was another material defect that vitiated the departmental inquiry proceedings.

(iii) We are fortified in our views by the decisions in **Krishanan Chander Vs. State of Delhi (supra)**, **Banarasi Das Vs. State of Haryana (supra)**, **State of U.P. Vs. Ram Asrey (supra)** and **Meena Balwant Hemke Vs. State of Maharashtra (supra)**, **M.K. Harshan Vs State of Kerala (supra)**, **Sanga Reddy Ananda Reddy Vs. State of Andhra Pradesh (supra)**, and **Jagadish Chander Vs. State of Haryana (supra)** that the fact of the complainant had to be examined and some corroboration was necessary to drive home the charges.

(iv) In the case of **Moni Shankar Vs. Union of India & Ors., 2008 (3) SCC 484**, having noted that the Railway Manual, in question, required that the

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transaction during the trap required to be heard by two or more independent witnesses who should establish that the money was being passed as illegal gratification to meet the defence that the money was actually received as a loan or something else, if put up by the accused and that the transaction should be within the sight and hearing of two independent witnesses, the Hon'ble Apex Court was of the following view:

"The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality.

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The High Court unfortunately even without any material on record held that some excess amount was found from the appellant which itself was sufficient to raise a presumption that it had been recovered from the decoy passenger. No such presumption could be raised. In any event there was no material brought on records by the department for drawing the said inference. The High Court itself was exercising the power of judicial review. It could not have drawn any presumption without there being any factual foundation therefor. It could not have taken judicial notice of a fact which did not come within the purview of Section 57 of the Indian Evidence Act."

Hon'ble Apex Court further observed,

"It is the High Court who posed unto itself a wrong question. The onus was not upon the appellant to prove any bias against the RPF, but it was for the department to establish that the charges levelled against the appellant."



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(v) In **M.V.Bijlani Vs. UOI & Ors., 2006 (5) SCC 88**, Hon'ble Apex Court has held that,

"It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."



(vi) In regard to non-supply of the documents relied upon for sustaining the charges, Hon'ble Apex Court in **Bilaspur Raipur Kshetriya Gramin Bank & Anr. Vs Madanlal Tandon**, reported in **2015 (8) SCC 461**, held that the departmental proceedings were vitiated and quashed the punishment of removal from service.

(vii) In **Chairman, LIC of India & Ors. Vs. A.Masilamani, 2013 (6) SCC 530**, the Hon'ble Apex Court succinctly held that the formation of opinion by the statutory authority should reflect intense application of mind.

(viii) In **Commissioner of Police, Delhi & Ors. Vs Jai Bhagwan, 2011(6) SCC 376**, the Hon'ble Apex Court having noted that the allegation of receiving illegal gratification being framed on the basis of suspicion and possibilities and other shortcoming in the entire investigation and the inquiry, non-examination of complainant and denial of cross-examination to the delinquent caused violation of Delhi Police (F&A) Rules 1980 and held that in absence of a definite and clear proof supporting the case of

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the appellants it was difficult to draw a finding of taking illegal gratification by the respondent (employee) from the complainant and affirmed the view of the Hon'ble High Court that it was a case of no evidence.



(ix) In **Krishan Chander Vs. State of Delhi, 2016 (3) SCC 108**, having found that there was nothing on record to show that it was the appellant who had demanded bribe money from complainant; the Hon'ble Apex Court held that the Trial Court and the High Court ought not to have relied upon the evidence of prosecution on the aspect of demand of illegal gratification from complainant by the appellant, though, there was no substantive evidence in that regard and held that the applicant was erroneously convicted for the charges framed against him and that the prosecution has failed to prove factum of demand of bribe money made by appellant from complainant which is sine qua non for convicting him for offences punishable under Section 7 and 13(1)(d) read with Section 13(2) of PC Act.

(x) In **M.K. Harshan Vs. State of Kerala, 1996 (11) SCC 720**, having noted that no independent evidence corroborated the version of the applicant or lent necessary accurance, accepted the view of the accused that the money had been planted in the drawer of his office table and granted him benefit of doubt.

(xi) In **Banarsi Dass Vs. State of Haryana, 2010 (4) SCC 450**, the Hon'ble Apex Court held that it was difficult for the court to hold that the prosecution had established that accused accepted money voluntarily as



illegal gratification where the shadow witnesses were declared hostile and the Hon'ble Apex Court held that to bring home charges under Section 5(1)(d) of Prevention of Corruption Act, 1947, demand and acceptance of money for doing a favour in the discharge of his official duties is *sine qua non* to the conviction of the accused.

(xii) Similar views have been expressed by the Hon'ble Apex Court and the respective High Courts in the decisions that have been cited by the applicant in support of his contention that independent witnesses had to see and hear the conversation that the money was being passed from complainant to the accused as a bribe money to do the complainant a favour.

(xiii) The Director General of Police while issuing the notice for dismissal from service recorded in his order the following:

"I have gone through the Enquiry Report submitted by the Enquiry Officer, the written reply submitted by the charged officer and the evidences brought on record. The charged officer was also heard in person on 23/01/2015. During the personal hearing, he did not raise any fresh points in his defence and only reiterated the submissions made in his written reply and requested for stay of disciplinary proceedings till conclusion of criminal case pending against him.

The main charge against the charged officer, S.I Mahesh Ram (under suspension) is that while posted at Traffic Branch he was caught red handed by the officials of Anti-Corruption Unit when he accepted the tainted bribe amount of Rs. 5000/- from Shri V. Kathiresan, S/o Late Verappathiran (complainant) at Nayagaon. Consequently, SI Mahesh Ram was arrested in case FIR No. 05/2013 dated 21/10/2013 under Sections 7/13(1)(d)/13(2) of Prevention of Corruption Act, 1988 registered at PS Anti Corruption Branch, Port Blair.

I have also gone through the statements deposed by all Prosecution Witnesses (PW's) who were examined during the departmental enquiry. All of them have corroborated the incident. Following the principles of natural justice, the Enquiry Officer has

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given ample opportunities to the charged officer to cross examine the PWs, but he declined to do so.

On perusal of the material on record, I agree with the findings of the Inquiry Officer that the Charge framed against the charged officer, is proved. The charge against the charged officer is very grave and serious involving corruption an act of moral turpitude of the highest level.

The misconduct of the charge officer, SI Mahesh Ram, is violative of Rule 8.35, 8.37, 8.45, 8.46 & 8.47 of A & N Police Manual, 1963, which calls for imposition of punishment of dismissal from service in so much as continuance of such officer in the disciplined force will not only shake the confidence of the society in police but will also adversely affect the morale of other members of the police force."

The authority has miserably failed to clarify why the independent

witnesses, Raji and Ramesan of the Trap Team, were not examined in course of the inquiry, since all other witnesses from the department were examined and there was every possibility that they were interested witnesses planted by the department itself.

(xiv) The Appellate Authority, being the Lieutenant Governor, recorded the following in his order:

"AND WHEREAS, a personal hearing of the appellant was held by the undersigned on 21.11.2016 and the above contentions raised by the Appellant was heard and found to be devoid of any merit and liable to be rejected. The plea taken by the Appellant that the Departmental Enquiry proceedings initiated against him should be stayed till conclusion of the criminal case has been rejected by the Hon'ble C.A.T vide its order dated 18/11/2014. The contention of the Appellant that the Departmental Enquiry initiated against was based on the facts of criminal case has not merit as the Departmental Enquiry against the Appellant was initiated on the basis of a Preliminary Enquiry Report, submitted by the Preliminary Enquiry Officer and based on documents, statements and evidences collected during the Preliminary Enquiry and not on the basis of FIR.

During the Departmental Enquiry proceedings, the Inquiry Officer had given ample opportunity to the

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Appellant to cross examine the prosecution witnesses but the Appellant declined to do so. The charge against the Appellant is of grave misconduct and gross indiscipline, involving act of moral turpitude. I am in total agreement with the view of the Disciplinary Authority that it is the prime objective of the police to secure the society from law-breakers/ offenders and to secure that objective, it is necessary to ensure honesty and integrity by each member of the police force. The charge of corruption/ taking gratification other than legal remuneration against the Appellant is most grave in nature and prejudicial to the interest of the police force. It was necessary for the Disciplinary Authority to complete the disciplinary proceedings as early as possible. It is a settled law that there is no bar for instituting Departmental Enquiry in respect of misconduct on the basis of the acts of omission or commission. The purpose / object and the standard of proof of prosecution and the departmental action are entirely different.

The scope of the Departmental Enquiry is to determine whether a public servant has committed misconduct and to consider the question whether the delinquent deserves to be retained in public service or otherwise and to deal with such delinquency suitably. Moreover, the degree of proof which is necessary to record an order of conviction in a criminal trial is entirely different from the degree of proof which is necessary to record the commission of the misconduct.

NOW THEREFORE, after going through all the materials placed on record, after hearing the Appellant personally on 21/11/2016 and the Order of the Disciplinary Authority, I do not find any merit in the instant Appeal preferred by the Appellant Ex. Sub-Inspector Mahesh Ram. Accordingly, the present Appeal is therefore rejected being devoid of any merit."

Even, in his order there is no mention that independent witnesses were neither called for examination during inquiry nor allowed to be cross examined.

(xv) In the criminal proceeding PW1, viz. Shri V.Kathiresan, the complainant, had made the following statement:

"It is fact that on 21.10.2007 I lodged a complaint at PS Anti-Corruption. I also admit that after lodging of complaint



there was discussion about proceeding of the trap. It is also fact that I produced Rs. 5000/- i.e. 5 GC Notes of Rs. 1000/- each before the trap member and the same was smeared with powder and then kept in my pocket. It is also fact that I put my signature in the pre-trap proceeding.

It is fact that I handed over the money to a police person having Two Star at Nayagaon.

Not a fact that after handing over the money to the police person having two star, the Anti-Corruption Unit seized the same in my presence from the said police person.

It is fact that I have stated before the police that the person whom I gave the bribe money was on Traffic duty on that particular day.

Not a fact that though I know accused Mahesh Ram but I intentionally did not identify him in the court in order to save him.

(Witness again failed to identify the accused person on dock).

Not a fact that I intentionally did not mention the name of accused Mahesh Ram in Court.

Not a fact that I am deposing falsely today to save the accused person.

Cross-examination:-

It is fact that I neither know the contents of the written complaint nor the same was read over to me.

It is fact that the pre-trap proceeding has not been read over to me. I only put my signature at the PS when I was called by the Anti-Corruption Unit but I do not know the content of any document in which I put my signature.

I have neither made any complaint against SI Mahesh Ram, nor the said SI demanded or accepted bribe from me.

It is fact that I have given bribe to one police person having Two-Star but the said person was not SI Mahesh Ram.

It is fact that I do not know whether the tainted money was seized or not from the person holding two-star by the Anti-corruption Unit.

It is fact that the Challan or the TR receipt that I have identified today though issued by the police person but I do not know his name."

From the aforesaid statements of the complainant before a court of law

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as recorded in a Judicial Order, the allegation against the applicant, as lodged by the complainant about demanding Rs. 5000/- as bribe money, gets diluted.

12. Shri R.Razi, who was, at the material time, posted as Development Section IV, Secretariat, Port Blair as Higher Grade Clerk, and accompanied the Trap Team as independent witness, had deposed before the Criminal Court as under:



"I have not heard the conversation between the complainant and the accused."

I have not seen any transaction between the complainant and accused.

After search, the alleged tainted money, which were alleged to be found from the possession of the accused were in the hand of the police of PS Anti-Corruption Unit till we reached the PS.

The police officers, who have searched the accused may have touched the alleged GC Notes smeared with powder and it may be possible that the smeared powder may have come into contact with his hands.

The right leg socks of the accused was not seized, nor it was washed in the solution.

There are shops, residential houses, ATM Counter and temple situated near the place of occurrence.

No seizure or recovery memo was prepared at the spot.

I have no personal knowledge regarding the demand of bribe.

I have put all my signature in all documents at PS Anti-Corruption.

I cannot say the contents of the documents at present in which, I put my respective signatures.

I admit that I am not posted under the Assistant Secretary (Vigilance). My head of office is Deputy Secretary (Personal) and controlling officer is Assistant Secretary (Higher Education).

I admit that the Assistant Secretary (Vigilance) is not the competent authority to depute me in any other place on duty."

The other independent witness, Shri M.V.Ramesan, also made similar statement of not hearing conversation between the complainant and accused, not seeing the transaction between the complainant and accused, not hearing about the demand of bribe by the accused from the complainant and, therefore, not having any personal knowledge regarding demand and acceptance of bribe which was *sine qua non* for implicating an employee for the charge of demanding and accepting bribe.



13. The Criminal Court has recorded hereunder: "After scanning the evidences and going through the documents exhibited, it has been revealed that the prosecution tried to prove that complainant V. Kathresan was directed to pay Rs. 5,000/- to accused, who was on traffic checking duty as illegal gratification for not challaning him but as the complainant was not willing to pay such bribe amount, he lodged a complaint before the Anti-corruption Unit and upon this, a Trap team was constituted to lay the trap. But said V. Kathresan did not support the case of the prosecution.

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A number of independent witnesses, interested and respectable persons were available at the spot but no attempts appeared to have been made by PW 4 Inspector V. Daniel to bring them as witnesses. No explanation is forthcoming for non-joining of such witnesses. Mere recovery of currency notes administered with phenolphthalein powder not even from the possession of the accused is not sufficient to establish the charge against the accused.

The other witnesses are the interested witnesses as they all are eager to make the trap a successful one and eager to make the investigation successful. Now a vital question may arise that the tainted notes i.e. Mat. Ext. III series has been recovered from shirt pocket of the accused so if the accused has not demanded the bribe how the Mat. Ext. IV was found there.

I have already stated that mere recovery of currency notes is not sufficient to convict the accused under section 7 and 13 (1)(d) of the Act, 1988.

It is well established that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under section 4(l) of the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden is shifted to the prosecution who has to discharge its original onus that never shifts i.e. that of establishing the whole case of the guilt of the accused beyond a reasonable doubt.

In *C.M. Girish Babu - vs - CBI*, (2009)3 SCC 779, the Hon'ble Court while dealing with the case under the Prevention of Corruption Act, 1988, by referring to its previous decision in *Suraj Mal - vs - State (Delhi Admn.)*, (1979) 4 SCC 725, held that "mere recovery of tainted money, divorced from the circumstances under which it is paid, is not sufficient to convict the accused when the substantive evidence in the case is not reliable."

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Ordered

That the accused Mahesh Ram is found not guilty of the offences punishable under section 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 punishable under section 13(2) of the Prevention of Corruption Act, 1988 and he is acquitted under section 235(1) of Cr.P.C."

14. In view of the forgoing enumerations and discussions, we feel it appropriate to quash the Penalty Order as well as Appellate Order and remand

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the matter back to the Disciplinary Authority to apply his mind on the facts, evidence and the manner in which the allegation should be proved at least on the basis of preponderance of probability, to arrive on the guilt of the applicant and, while doing so, the Disciplinary Authority should keep in mind that without corroboration by the independent witnesses, the applicant can not be proved guilty of "demanding" and "accepting" bribe money and mere recovery of tainted note/currency cannot be sufficient to prove the charge levelled against the applicant. Ordered accordingly.

15. O.A. is, thus, disposed of with no order as to costs.

(Tarun Shridhar)
Member (A)

(Bidisha Banerjee)
Member (J)

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