IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

T.A NO. 365 OF 2009
(WRIT PETITION (CIVIL) NO.433 OF 2009)

EX CDRE. NARINDER PANDIT ..APPELLANT

V.

UNION OF INDIA AND OTHERS ...RESPONDENTS

ADVOCATES

MR. SUKHJINDER SINGH FOR THE APPELLANT
MS. JYOTI SINGH
WITH
MR. DINESH YADAV & LT. CDR. VARUN SINGH
FOR THE RESPONDENTS

CORAM

HON'BLE MR. JUSTICE S.S KULSHRESTHA, MEMBER
HON'BLE LT. GEN. S.S DHILLON, MEMBER

J U D G M E N T
19.05.2011

1. In this case (W.P No. 5685 of 1998) filed before the Delhi High Court, the challenge is directed against the findings and

sentence of the court martial dated 8.6.2004, whereby the petitioner was found guilty of Charge Nos. 1 and 2 under Navy Act Section 60(d), Charge Nos. 8 and 9 under Navy Act Section 54(2), Charge Nos. 3, 10 and 12 under Section 13()1)(d)(ii) of the Prevention of Corruption Act 1988 read in conjunction with Navy Act Section 77(2) and Charge Nos.4, 5 and 6 under Section 13(1)(e) and 13(2) of the Prevention of Corruption Act 1988 read in conjunction with Navy Act Section 77(2) and sentenced (i) to undergo rigorous imprisonment for eighteen calendar months, (ii) to be dismissed from naval service (iii) to forfeit 36 calendar mo nths' seniority in the substantive rank of Captain and (iv) to pay a fine of Rs.3 lakhs with default clause. On formation of this Tribunal, the said writ petition was transferred to this Bench and treated it to be an appeal (T.A No. 365 of 2009) under Section 15 of the Armed Forces Tribunal Act, 2007.

2. The facts giving rise to this appeal in a nutshell are: The appellant joined the Indian Navy in January 1971 and in January 2000; he was promoted to the rank of Commodore. On 20.10.2003, he was served with a charge sheet and connected documents, including notice of trial and was called upon to present himself

before the court martial. The charge sheet that was issued to the appellant alleged that he had committed various offences both under the Prevention of Corruption Act (PC Act, in short) and the Navy Act. On the plea of "not guilty" to the charges, the appellant was put to trial by the court martial. On evaluating the evidence adduced by the prosecution and the defence, the court martial held the appellant guilty of Charge Nos. 1 to 6, 8 to 10 and 12 and he was sentenced, as stated above. Both his pre and post representations against the findings and sentence also ended in dismissal. Hence this appeal.

3. Learned counsel for the appellant submitted that the court martial had no territorial jurisdiction to enquire into and try the offences covered by Charge Nos. 1 to 7 as the cause of action pertaining to the offences started and completed in Delhi area. The court martial was ordered without adhering to the mandatory provisions under Regulations 156 to 159 of the Regulations for Navy Part II (Statutory) (the Regulations, in short). The members of the court martial were hand-picked violating the provisions of Sections (97(7), 97(12) to (20) and 101(3) read with Section 102 of the Act. The trial was biased and was, therefore, vindictive, which resulted in

gross miscarriage of justice. Furthermore, by not ordering a board of inquiry, the appellant was denied his fundamental rights. The appellant was not provided the copies of the charge sheets and the statements of the witnesses. The witnesses were procured by adopting dubious methods and, therefore, their testimony is impeachable in terms of Section 155(2) of the Act. The court martial failed to comply with the provisions of Section 111(8) of the Act which would go to the very root of the trial. It is also contended that the Commanding Officer, INS Angre was not competent to try him as he was not borne on INS Angre.

4. This appeal was resisted on behalf of the respondents contending, inter alia, that the appellant was borne on the books of INS Angre Additional for duties as Material Superintendent, Mumbai. Prior to this, he was borne at INS India Additional as Director (Clothing & Victualling) at Naval HQs, New Delhi. Having noticed that he was indulging in illegal activities, he was attached to Admiral Superintendent Dockyard, Mumbai for the purpose of investigation and trial by court martial in accordance with the Act and the Regulations. The court martial found him guilty of Charge Nos. 1 and

2 under Section 60(d) of the Act, Charge Nos. 8 and 9 under Section 54(2) of the Act, Charge Nos. 3, 10 and 12 under Section 13(1)(d)(ii) of the PC Act read in conjunction with Section 77(2) of the Act and Charge Nos. 4, 5 and 6 under Sections 13(1)(e) and 13(2) of the PC Act read in conjunction with Section 77(2) of the Act. While the court martial proceedings were in progress, the appellant filed W.P No. 2826 of 2003 before the High Court of Mumbai alleging irregularities in the investigation and trial by the court martial. The said writ petition was dismissed without granting any relief to the appellant. Against it, the appellant approached the Supreme Court unsuccessfully. However, he was allowed to raise all his objections before the appellate authority. Subsequently, on 8.6.2004, on completion of the court martial proceedings, yet another writ petition was filed by the appellant before the Mumbai High Court viz. Writ Petition No. 1977 of 2004, which was disposed of by directing the respondents to decide the appeal filed by the appellant within three months from the date of the order. Thereafter, on being released after undergoing rigorous imprisonment, on 6.8.2005, the appellant filed W.P No. 9317 of 2007 before the Delhi High Court for grant of pensionary benefits, which was dismissed.

5. Learned counsel for the respondents has pointed out that ordering investigation under Regulation 149 of the Regulations is prescribed in Chapter V and the Regulations for board of inquiry are prescribed under Chapter VII of the Regulations. The regulation does not prescribe that prior to convening a court martial; a board of inquiry has to be constituted to investigate the matter. Further, in disciplinary matters, it is not mandatory to order a board of inquiry as it is only a fact finding body and its recommendations are not binding on the administrative authority. The appellant was the Material Superintendent, Materials Organisation, Mumbai when the Flag Officer, Commanding in Chief (West) directed the Commanding Officer, INS Angre to raise a circumstantial letter in terms of Regulation 148 of the Regulations. Personnel borne in MO (MB) are attached to depot ship INS Angre as additional for administrative purposes. The appellant was borne on the books of INS Angre from the date of his appointment as Material Superintendent, Materials Organisation, Mumbai and as such, Regulation 148(5) empowered the Commanding Officer to raise circumstantial letter and investigate the allegations. Therefore, the Commanding Officer had jurisdiction to conduct trial in accordance with Regulation 148(5). Furthermore,

Section 78(1) of the Act clearly states that any person subject to naval law charged with a naval or civil offence may be tried and punished under the Act regardless of the place of commission of the offence. Therefore, the convening authority was competent to initiate court martial proceedings against the appellant. Moreover, Regulations 242 to 244 make these positions more clear. Neither the Act nor the Regulations cater for providing copies of the charge sheet and the statements of the witnesses during investigation. However, he was provided with all necessary documents as provided under Regulation 159. The convening authority or the officer convening the court martial is empowered to exempt any officer from attending as member of the court martial on the ground of sickness or urgent public duty in accordance with Section 97(20) of the Act and, therefore, there was no violation of any of the provisions of the Act or the Regulations. No injustice has been done to the appellant as he was provided ample opportunity to defend himself.

6. Before considering the rival contentions raised by the counsel on both sides, it would be appropriate to quote the charges wherein the appellant was found guilty. They are:

(1) Did on 18th Jul 2002 knowingly make a fraudulent statement in a document, namely Temporary Duty Claim CG/3224/NM dated 18th Jul 02, for visit from Delhi to Mumbai and Halol and back to Delhi from AM 04 Jul 02 to PM 07 Jul 02, to be used for official purposes, to wit he claimed to have performed the journey from Mumbai to Halol and back by taxi and paid the fare for the same and that no free accommodation and messing was provided at the outstation, and thereby committed an offence punishable under Section 60(d) of the Navy Act, 1957.

(2) Did on 19th Aug 2002 knowingly make a fraudulent statement in a document, namely Temporary Duty Claim CG/3224/NM dated 26th Aug 02 for visit from Delhi to Halol and Vapi/Mumbai and back to Delhi from AM 08 Aug 02 to PM 11 Aug 02 to be used for official purpose, to wit he claimed to have performed the journey from Vadodara to Halol and Halol to Mumbai by taxi and paid the fare for the same and that no free accommodation and messing was provided at the outstation, and thereby committed an offence punishable under Section 60(d) of the Navy Act, 1957.

(3) Did at about 2000 hrs on 19th Aug 2002, being a public servant posted as Director of Clothing & Victualing, Naval Headquarters, New Delhi, by abusing his position as public servant, obtain pecuniary advantage comprising Rs.1,40,000/- (Rupees One Lakh Forty Thousand), for himself, from Mr Manimoy Salrkar, representative of Safari Industries (India) Ltd whose firm had been given orders for 5000 pieces of Size 26 Sailors Suitcases valued at approximately Rs.32 Lakhs vide CPRO (MB) Order No. MOPR/CMT-1/01098/087/2002/DG-29 dated 17 May 2002 and 8400 pieces Size 18 Sailors

Suitcases valued at approximately Rs.35 Lakhs vide CPRO (MB) Order No. MOPR/CMT-1/01111/098/2002/DG-559 dated 15 Jun 02, at his residence 311, Block 23, Arjun Vihar, New Delhi, and thereby committed an offence under Section 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 punishable under Section 13(2) of the said Act, read in conjunction with Section 77(2) of the Navy Act, 1957.

(4) Did on 31st Aug 2002, being a public servant posted as Director of Clothing & Victualling, Naval Headquarters, New Delhi, possess pecuniary resources in his name to the extent that he deposited a sum of Rs.50,000/- (Rupees Fifty Thousand) by cash in the Savings Bank Account No.202346 in Syndicate Bank, Dhaula Kuan, New Delhi, which is disproportionate to his known source of income namely salary, for which could not satisfactorily account, and thereby committed an offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988 punishable under Section 13(2) of the said Act, read in conjunction with Section 77(2) of the Navy Act 1957.

(5) Did between 1st Dec 2002 and 31st Dec 2002, being a public servant posted as Director of Clothing and Victualling, Naval Headquarters, New Delhi, possess pecuniary resources in his name to the extent that he deposited a sum of Rs.3,55,000/- (Rupees Three Lakh Fifty Five Thousand) namely, Rs.80,000/- in the Savings Bank Account No. 007010100124720 in UTI Bank Ltd, Barakhamba Road, New Delhi, Rs.25,000/- in the Savings Bank Account No. 90552010094343 in Syndicate Bank, South Block, New Delhi and Rs.2,50,000/- in the Savings Bank Account No. 1391150011493 in HDFC Bank Ltd, Gopinath Bazar, Delhi Cant, which is disproportionate to

his known source of income namely salary, for which could not satisfactorily account, and thereby committed an offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988 punishable under Section 13(2) of the said Act, read in conjunction with Section 77(2) of the Navy Act, 1957.

(6) Did between 1st Mar 2003 and 31st Mar 2003, being a public servant posted as Material Superintendent, Material Organisation, Mumbai possess pecuniary resources in his name to the extent that he deposited a sum of Rs.4,40,000/- (Rupees Four Lakhs Forty Thousand) namely Rs.1,50,000/- in the Savings Bank Account No. 002601040093 in ICICI Bank, Ghatkopar (East), Rs.50,000/- in the Savings Bank Account No. 029010100100786 in UTI Bank Ltd, Ghatkopar, Rs.45,000/- in the Savings Bank Account No.1181150002264 in HDFC Bank, Ghatkopar, Rs.95,000/- in the Savings Bank Account No. 202436 in Syndicate Bank, Dhaula Kuan, New Delhi, and Rs.1,00,000/- in Savings Bank Account No. 90552010094343 in Syndicate Bank, South Block, New Delhi, which is disproportionate to his known sources of income namely salary, for which could not satisfactorily account, and thereby committed an offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988 punishable under Section 13(2) of the said Act, read in conjunction with Section 77(2) of the Navy Act, 1957.

(8) Was at about 2000 hrs on 14th Apr 2003, guilty of conduct unbecoming the character of an officer in that he accepted a gift of Rs.25,000/- (Rupees Twenty Five Thousand) from Mr Hemant R Mehta, Partner of M/s Hemant Engineering Works, Thane, manufacturers and

suppliers of davits to the Indian Navy, at his residence in Material Organisation, and thereby committed an offence punishable under Section 54(2) of the Navy Act, 1957.

(9) Was at about 0800 hrs on 16th Apr 2003, guilty of conduct unbecoming the character of an officer in that he accepted a gift of Rs.15,000/- (Rupees Fifteen Thousand) from Mr Sunil Mehta, Liaison Officer for M/s Raksha Polycoats, Pune, suppliers of life jackets to the Indian Navy, at his residence in Material Organisation, and thereby committed an offence punishable under Section 54(2) of the Navy Act, 1957.

(10) Did at about 1500 hrs on 25th Apr 2003, being a public servant posted as Material Superintendent, Material Organisation, Mumbai, by abusing his position as public servant, obtain pecuniary advantage comprising Rs.8,000/- (Rupees Eight Thousand) for himself from Mr Vijay Kumar Singhal, Proprietor of M/s Computer Stationery, Mumbai whose firm was supplying computer related items to the Indian Navy through the said Material Organisation, at his office in the said Material Organisation, and thereby committed an offence under Section 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 punishable under Section 13(2) of the said Act, read in conjunction with Section 77(2) of the Navy Act, 1957.

(12) Did at about 1800 hrs, on 1st Jun 2003, being a public servant posted as Material Superintendent, Material Organisation, Mumbai, by abusing his position as public servant, obtain pecuniary advantage comprising Rs.20,000/- (Rupees Twenty Thousand) for himself from Mr Ashok Shah, Director, M/s. Morsun

> Coating Systems whose firm had a Rate Contract for supply of Heavy Duty Non Skid Grey Paint for the period 2002-2003 with the said Material Organisation, at his residence in Material Organisation, and thereby committed an offence under Section 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 punishable under Section 13(2) of the said Act, read in conjunction with Section 77(2) of the Navy Act, 1957.

7. It was strenuously argued by learned counsel for the appellant that Section 160(1) of the Act makes it mandatory on the part of the Judge Advocate General (JAG, for brevity) to make a judicial review of the court martial proceedings either on his own or on an application made to him by the aggrieved. The JAG abdicated his power and failed to make judicial review of the court martial proceedings *suo motu* but took a view contrary to the statutory provisions, by communication dated 2.7.2008, that since the application of the appellant had already been disposed of by a higher authority viz. Ministry of Defence, judicial review under Section 160 of the Act cannot be resorted to. It was also stated by the learned counsel for the respondents that the appellant himself had made an application for review on 30.10.2004 before the Ministry of Defence

and the same was dismissed by it and a re-look to the grounds set up in the review application was unwarranted.

8. It is, no doubt, true that the provisions of Section 160 have the mandatory import. But what necessitated of the JAG was either *suo motu* or on application made to him by the aggrieved, to transmit the report along with his recommendation, as may be just and proper, to the Chief of Naval Staff or to the Central Government, which decided the matter earlier. There appears to be no illegality on the part of the respondents in not considering the application for judicial review. It may further be mentioned that when the order passed by the court martial was subjected to the remedy available under the law viz. Sections 160 to 162 before the higher authority and it was decided, the JAG could not re-look into the reasons raised in the review application as the decision of the higher authority became final and binding. Therefore, this case is squarely covered under the 'doctrine of merger'. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject matter at a given point of time (see **Kunhayammed and others** v. **State of Kerala and another** – AIR 2000 SC 2587(1)). When the order passed by the court martial was

subjected to a remedy available under Section 161 of the Act before the higher forum and was finally decided, the authorities subordinate to such forum cannot decide or pass a different order. Under such circumstances, there is no illegality or irregularity on the part of the respondents in not making judicial review of the matter.

9. It is next contended by the learned counsel for the appellant that the appellant was arraigned of twelve charges viz. six under the Navy Act and rest under the Prevention of Corruption Act. Charge Nos. 1 to 5 and 7 pertain to the period when the appellant was serving as Director of Clothing and Victuallying at New Delhi from 5.5.2000 to 24.12.2002. These charges could be investigated and acted upon at New Delhi only by the Chief of Naval Staff. In view of Regulation 148(3), neither the Commanding Officer, INS Angre at Mumbai nor the Flag Officer, Commanding, Western Naval Command had jurisdiction to try these charges. On the other hand, learned counsel for the respondents contends that in view of Section 78(1) of the Act, "any person subject to Navy law charged with a naval or civil offence may be tried and punished under the Act regardless of the place of commission of the offence." In view of Section 78(1), the

convening authority is competent to initiate court martial proceedings against the appellant. To answer this point, it would be useful to refer to Regulation 148(5) of the Regulations. It reads:

> **148**. **When application for court martial be made**:- (1) ……..
>
> (2) …….
>
> (3) …….
>
> (4) …….
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> (5) In the case of an officer serving a Naval establishment not commissioned as a ship, the application for trial shall be made by the head of that establishment, unless such establishment is under the command of a Commanding Officer of one of Indian Naval Ships.

It deals with a situation where the Commanding Officer is empowered to make an application for trial of offender by a court martial. In the case of officer serving naval establishment non-commissioned as a ship, the application for trial shall be made by the head of the establishment unless such establishment is under the command of the Commanding Officer of one of the Indian naval ships. It shall be relevant to mention that Section 78 of the Act

permits joinder of charges, even if it had taken place at a different place. Section 78 reads as under:

> **78. Jurisdiction as to place and offences**.—(1) Subject to the provisions of sub-section (2), every person subject to naval law who is charged with a naval offence or a civil offence may be tried and punished under this Act regardless of where the alleged offence was committed.
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> (2) A person subject to naval law who commits an offence of murder against a person not subject to army, naval or air force law or an offence of culpable homicide not amounting to murder against such person or an offence of rape in relation to such person shall not be tried and punished under this Act unless he commits any of the said offences—
>
> (a) while on active service; or
>
> (b) at any place outside India; or
>
> (c) at any place specified by the Central Government by notification in this behalf.

The Statute permits that trial of the accused for the offences committed at Delhi along with the charges of his subsequent act and/or omission. Regulation 148(5) would not supersede the statutory provisions. However, much thrust was laid by learned counsel for the appellant that these are statutory regulations and cannot be ignored. There is no dispute that the statutory Rules and

the Regulations, though subordinate to the Statute, are to be treated as part of the Statute and as effective (see **State of Tamil Nadu** v. **M/s. Hind Stone** – AIR 1981 SC 711 and **Peerless General Finance and Investment Co. Ltd** v. **Reserve Bank of India** – AIR 1992 SC 1033). These Rules and Regulations are integral parts of one whole scheme and are to be read together. Quoting from Maxwell on Interpretation of Statutes, the apex Court made it clear that a Statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction and obligation; an action taken under the Act or the Rules made thereunder must conform to the provisions of the Act and the Rules which have conferred upon the appropriate authority the power to take an action. Reliance may be placed on the decision in **State of U.P** v. **Babu Ram** (AIR 1961 SC 751). Viewed in this light, Section 78 of the Act is to be read and interpreted. Therefore, we are of the view that Charge Nos.1 to 5 and 7 were correctly tried along with the other offences which had taken place at a different place, in view of Section 78 of the Act. Even if there is misjoinder of charges, that would not vitiate the trial. When there is no provision under the

Navy Act with regard to misjoinder, the provisions of the Code of Criminal Procedure is also to be looked into. In **Abdul Sayeed** v. **State of Madhya Prades** (2010(10) SCC 259), it was held by the apex Court thus:

> "42. In *State of A.P* v. *Thakkidiram Reddy* (1998(6) SCC 554), this Court considered the issue of failure to frame the proper charges as under: (SCC p. 558, para 10)
>
> > "10. Sub section (1) of Section 464 of the Code of Criminal Procedure, 1973 ('the Code', for short) expressly provides that no finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. Sub-section (2) of the said section lays down the procedure that the court of appeal, confirmation or revision has to follow in case it is of the opinion that a failure of justice has in fact been occasioned. The other section relevant for our purposes is Section 465 of the Code; and it lays down that no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, omission or irregularity in the proceedings, unless in the opinion of that court, a failure of justice has in fact been occasioned. It further provides, inter alia, that in determining whether any error, omission

> or irregularity in any proceeding under this Code has occasioned a failure of justice, the court shall have regard to the fact whether he objection could and should have been raised at an earlier stage in the proceedings."

> The Court further held that in judging a question of prejudice, as of guilt, the court must look to the substance of the matter and not to technicalities, and its main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. In the said case this Court ultimately came to the conclusion that despite the defect in the framing of charges, as no prejudice had been caused to the accused, no interference was required."

This view was reiterated by the apex Court in **Ramji Singh and another** v. **State of Bihar** (2001(9) SCC 528), **Gurpreet Singh** v. **State of Punjab** (2005(12) SCC 615), and **Sanichar Sahni** v. **State of Bihar** (2009(7) SCC 198) and further held that unless there is a failure of justice and thereby the cause of the accused has been prejudiced, no interference is required if the conviction can be upheld on the

evidence led against the accused and the Court should not interfere unless it is established that the accused was in any way prejudiced due to the errors and omissions in framing the charges against him.

10. It was further contended by learned counsel for the appellant that the appellant was arraigned for the offences falling under the PC Act. The bribe giver is also an accomplice and is guilty of abetment. He should have also been tried alongwith the appellant by a competent court of jurisdiction. The case of the appellant cannot be segregated from that of the abettor since the case of the abettor falls within jurisdiction vested with the Special Judge under the PC Act. The Commanding Officer was not competent to take up that case and refer for trial by the court martial. In this regard, Section 3(1) of the PC Act was also referred to contend that exclusive jurisdiction is conferred upon a Special Judge under the PC Act and the court martial ought not to have proceeded with it. Reliance was placed by learned counsel for the respondents on the principle of law enunciated by the apex Court in the decision reported in **P. Nallammal and another** v. **State represented by Inspector of Police** (1999(6) SCC 559), wherein it was held that:

> "10. Thus, clause (b) of the sub-section encompasses the offences committed in conspiracy with others or by abetment of 'any of the offences' punishable under the PC Act. If such conspiracy or abetment of 'any of the offences' punishable under the PC Act can be tried "only" by the Special Judge, it is inconceivable that the abettor or the conspirator can be delinked from the delinquent public servant for the purpose of trial of the offence. If a non-public servant is also a member of the criminal conspiracy for a public servant to commit any offence under the PC Act, or if such non-public servant has abetted any of the offences which the public servant commits, such non-public servant is also liable to be tried along with the public servant before the Court of a Special Judge having jurisdiction in the matter."

It may be mentioned that Section 25 of the PC Act excludes the jurisdiction exercisable by the procedure applicable to Army Act, Navy Act, Air Force Act and the Border Security Act. By such exclusion, the court martial was competent even to make trial of the individual when the alleged abettor was not in the picture. Therefore, merely the abettor was not put to trial along with the appellant is no reason to vitiate his trial.

11. It has next been contended by learned counsel for the appellant that laconic orders like the present one were passed by the

court martial and they were set aside as being unreasoned. The Bombay High Court in W.P (C) No. 491 of 1996 decided on 17.10.1997, set aside the order of the court martial as unreasoned. Counsel for the appellant has pointed out that it is settled legal position that administrative and judicial orders must be supported by reasons. In the case on hand, the court martial ought to have stated the reasons while forming its conclusion. It was obligatory on the part of the court martial to record its reasons while disposing of the case. The hall mark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of administration of justice and delivery system, to make known that there had been proper and due application of mind to the issue and as an essential requisite of the principles of natural justice. On the other hand, learned counsel for the respondents has contended that as per Section 117 of the Navy Act, the court martial had considered the finding and re-assembled and the President informed the trial judge Advocate in open Court as to the finding of the court as ascertained in accordance with Section 124. The Navy Act does not deal with drawing up of findings with recorded reasons. This

question came up for consideration before the apex Court in **Union of India and another** v. **Dinesh Kumar** (2010(3) SCC 161). Though it related to Sections 64, 70, 74, 117(1)(2) and 141 of the Border Security Forces Act 1968, the question was whether the court was to give reasons in support of its verdict. Placing reliance on the decisions in **Som Datt Datta** v. **Union of India** (AIR 1969 SC 414) and **S.N Mukherjee** v. **Union of India** (1990(4) SCC 594), the apex Court held that the court was not required to give any reasons, but if recorded, they would enable the higher courts to effectively exercise the appellate or supervisory power. A conjoined reading of Navy Act Sections 117 and 124 would make the position more clear. Sections 117 and 124 of the Navy Act read:

> "**117. Announcement of the finding**:-- (1) When the court has considered the finding the court shall be reassembled and the president shall inform the trial judge advocate in open court what is the finding of the court as ascertained in accordance with section 124.
>
> (2) The court shall give its findings on all the charges on which the accused is tried.
>
> **124. Ascertaining the opinion of the court**:-- (1) Subject to the provisions of sub-sections (2) and (3), every question for determination by a court-martial shall be decided by the vote of the majority:

> Provided that where there is an equality of votes, the decision most favourable to the accused shall prevail.
>
> (2) The sentence of death shall not be passed on any offender unless four at least of the members present at the court-martial where the number does not exceed five, and in all other cases a majority of not less than two-thirds of the members present, concur in the sentence.
>
> (3) Where in respect of an offence, the only punishment which may be awarded is death, a finding that a charge for such offence is proved shall not be given unless four at least of the members present at the court-martial where the number does not exceed five, and in all other cases a majority of not less than two-thirds of the members present, concur in the finding."

From a bare perusal of the above provisions, it would appear that the court martial is not required to record its reasons. In the cases of **Lt Cdr M.P Verma** v. **Union of India** (W.P (C) No. 9509 of 2004 decided on 25.9.2008 by the Delhi High Court and **Ex Lt Shivendra Bikaram Singh** v. **Union of India** (W.P (Cri) No. 3 of 2001), the finding of the Bombay High Court that the question of non-recording of reasons would vitiate the trial, is no longer *res integra*. The Bombay High Court in **Ex Lt Shivendra Bikaram Singh's case** (supra), the Bombay High Court held thus:

"8. The next argument advanced on behalf of the petitioner that the impugned orders are vitiated on account of non recording of reasons in support of the conclusion reached by the authorities, the same merely deserves to be stated to be rejected. The said issue is no more res integra. No doubt certain observations have been made by the Apex Court in the judgment reported in Lt Col Prithi Pal Singh Bedi v. Union of India and (supra), but the same, as observed by us earlier are only recommendations and not a law within the meaning of Article 141 of the Constitution. However, in the case of S.H Mukharjee, AIR 1990 SC 1984, the Constitution Bench of the Apex Court, after adverting to catena of decisions has concluded that at the stage of recording of findings and sentence, the Court Martial is not required to record reasons, but only when it recommends mercy if the Court makes such recommendation. This enunciation has been summed up in para 43 of the said decision. The Apex Court has further observed that there is nothing in the language of the relevant provisions which may lend support to the plea that reasons are required to be recorded even at the confirmation stage. In the circumstances, this issue is no more res integra. Mr. Dessai, the learned counsel for the petitioner has placed reliance on an unreported decision of the Division Bench of this Court in Criminal Writ Petition No.191/96 decided on October 17, 1997, particularly para 10 of the said decision, to contend that the order was vitiated for want of reasons recorded in supports thereof. The observations made in the said decision are clearly contrary to the ratio of the abovesaid decision of the Apex Court and, therefore, not a good law on this aspect."

This judgment was rendered after the decision of the Bombay High Court in the case of Ex Sgt Cdr Bhaskar Ray relied upon by the appellant. The subsequent decision of the Bombay High Court is thus relied upon. The unreasoned order, as was recorded by the court martial, would not render the entire proceedings vitiated as per the above findings.

12. It has further been submitted by learned counsel for the appellant that the Board of Inquiry is *sine qua non*, in terms of Paragraphs 4 and 7(g)(h) of the Navy Order (Special) No. 2 of 2002 read with Regulation 197(2) of the Regulations for Navy Part II (Statutory) and Regulation 202 thereof, thereby depriving the appellant to defend himself in terms of Regulation 205 and denying him the opportunity to cross examine the witnesses in terms of Regulation 207 read with Regulation 209 and in terms of Section 145 of the Evidence Act for the purpose of impeaching the credibility of the witnesses. On the other hand, learned counsel for the respondents has pointed out that inquiry by a Board is not mandatory in every case, it being a fact finding authority, as was held by the apex Court in **Lt. Col. P.P.S Bedi and others** v. **Union of India** (AIR 1982 SC 1413). Moreover, Paragraph 7 of the Navy Order

mandates holding of Board of Inquiry only in the cases enumerated in Clause (a) to (i). The charge against the appellant relates to acceptance of bribe, which is punishable under the Prevention of Corruption Act. Corrupt practices would not fall within Para 7 of the Navy Order. In this regard, it would be relevant to quote Para 7 of Navy Order (Special) No. 2 of 2002. It reads:

> 7. **Occasions for Board of Inquiry**. Boards of Inquiry shall be convened on the following occasions:-
>
> (a) Loss, stranding or hazarding of any Indian Naval Ship, Submarine, Vessel or Aircraft.
>
> (b) Unnatural/accidental death and/or serious bodily injury/disability to any person on board an Indian Naval Ship/Submarine/Vessel/Aircraft/Establishment or within a Naval area of operation/jurisdiction.
>
> (c) Disappearance/missing of any person from an Indian Naval Ship/Submarine/Vessel/Aircraft while underway or under similar mysterious circumstances.
>
> (d) Loss of charge books, documents, publications or part thereof bearing security classification of "Confidential" and above.
>
> (e) Damage to and/or loss of Government property or stores or public money that is beyond the prescribed limits as laid down in the relevant Financial Regulations, Instructions and Orders.
>
> (f) Where major equipment/machinery/property of the Indian Navy remains non-operational or

> defective or in disuse for a prolonged period after procurement and/or where they are exploited at reduced performance after commissioning/major refit, this being an aspect having adverse effect on the combat efficiency of the unit/Navy.
>
> (g) Cases of major lapses on material procurement and management procedures.
>
> (h) Cases involving financial irregularities, fraud or breach of trust.
>
> (j) Cases of serious/concerted indiscipline, scandalous conduct and cruelty.
>
> (k) Incidents in which damage to civilian property, death and/or serious injury to civilian persons caused by a member of Armed Forces within a Naval Area.
>
> (l) Summary reduction in rank of a Chief Petty Officer or a Petty Officer in exceptional circumstances in terms of Regulation 30(f), Regulations for the Navy Part II (Statutory).

Counsel for the appellant is categoric in his contention that it pertained to cases involving financial irregularities, fraud or breach of trust or serious matters concerning indiscipline, as is stated in Clauses (g), (h) and (j). Corruption matters would not fall within the ambit of "financial irregularities, breach of trust or fraud". Corruption is a crime and it cannot be termed solely as indiscipline and it is not mandatory to hold a Board of Inquiry in corruption matters. As regards Regulations 197(ii), 202, 205, 207 and 209 of Chapter VII of

Regulations for the Navy Part II (Statutory) are concerned, they relate to the procedure for convening Board of Inquiry but do not bring corruption charges within the ambit of Board of Inquiry covered by Navy Order (Special) No. 2 of 2002. On receipt of any information of loss or corrupt practices adopted by an individual, the authority is not prevented from convening a Board of Inquiry. Though it is permissible, no mandatory import is attached to it. In the instant case, sufficient grounds for investigating by way Court of inquiry were found and in this situation, the Board of Inquiry was not essential. The Commanding Officer is the statutory authority. He has statutory duty to carry out investigation in accordance with law. Ordinarily, it is not within the province of the Court to assess as to what factors persuaded the authority not to hold a Board of Inquiry. When holding of a Board of Inquiry is not a statutory requirement in corruption cases, we do not find any reason to interfere with the finding on this count. It may further be added that the satisfaction of the appropriate authority is premised on evidence justifying initiation of Court of Inquiry. No prejudice is caused to the appellant.

13. It has next been contended by the counsel for the appellant that the Commanding Officer, INS Angre was not

competent to try him nor was he borne on INS Angre and, therefore, he had no authority to issue charge sheet against the appellant. Placing reliance on the decisions reported in **Mahipal Singh** v. **Union of India** (1994 LAB IC 2365), **Dhanajoy Reddy** v. **State of Karnataka and others** (2001(4) SCC 9), **State of Kerala and others** v. **K. Prasad and another** (2007(7) SCC 140), **Indian Bank and another** v. **N. Venkatramni** (2007(10) SCC 609), **Harshad Chiman Lal Modi** v. **DLF Universal Ltd** (2005(7) SCC 791) and **Dr. Sudha Suri** v. **Union of India** (2002(1) SLR 665), it was submitted that the appellant was not attached to INS Angre and the investigation made at his behest was without authority of law. The appellant continued to be attached and on the books of Admiral Superintendent, Naval Dockyard. In view of Navy Instruction No.95 of 1969, the appellant should have been attached to INS Angre, but it was not done, as is evident from Annexures P13, P14, P15, P17 and P18. This was negatived by counsel for the respondents contending that in Navy, every person is on the books of a ship or a commissioned establishment, as defined in Navy Act Sections 3(21) and 12(A). Personnel posted in establishments which are not ships, such as the present one, i.e. MO (MB) are borne on the books of the establishment, which, in the case

of the appellant, was INS Angre. In the Navy, every casualty or posting or attachments are published in the form of General Forms. Reliance is placed on the General Forms. Page 773 of the court martial proceedings contains it. It reads as under:

Details of Casualty/Exact Casualty: Leave cum permanent transfer – proceeding on 07 days PBAL of 2002 WP Px 25/12/02 and on paid transfer to INS Angre addl MO (Mumbai) as Material Superintendent vide NHS Letter RS/3501/02/179 dt 29/10/02
CERTIFIED CORRECT BAL of 02 Due – 48 days Form 'D' availed – Nil

It is further submitted that the attachment of the Naval officer (appellant) to the ship (INS Angre) was for the purpose of initiating and completing disciplinary proceedings speedily and satisfactorily without any interference. This would show that the appellant was borne on INS Angre. Identical is the case of Lt Col M.P Verma, who was also involved in the same corruption charges (**Lt Cdr M.P Verma** v. **Union of India** - W.P (C) No. 9509 of 2004 decided on 25.9.2008 by the Delhi High Court), wherein it was held that INS Angre had jurisdiction to investigate and issue charge sheet against him. The

observations made by the Delhi High Court in **Lt Col M.P Verma's case** (supra) are extracted hereinunder:

> "38. The first and foremost objection of the petitioner is that he being an officer borne in Materials Organisation (Mumbai), Commanding Officer INS ANGRE had no authority either to appoint the investigation officer or to make an application for his Court Martial, which authority was only vested in MS (MO). Thus the action of the Commanding Officer INS ANGRE is violative of Regulation 148(5), which is reproduced hereunder:
>
> > **148**. **When application for court martial be made**:-
> >
> > (5) In the case of an officer serving a Naval establishment not commissioned as a ship, the application for trial shall be made by the head of that establishment, unless such establishment is under the command of a Commanding Officer of one of Indian Naval Ships.
>
> 39. Regarding the attachment of the petitioner with Commanding Officer INS Angre, the respondents gave two justifications. Firstly, they relied upon NI 95/69 which permits them to attach the petitioner for disciplinary purposes with INS Angre or any other ship. Once such attachment takes place then the commanding officer of that ship becomes entitled to take all necessary actions against the officer including carrying out further investigations so that the Commanding Officer is satisfied in respect of charges levelled against the officer before he makes an application for his trial by a Court Martial. For that purpose, he can also appoint an

investigating officer in accordance with Regulations 148 (supra) and 149. These Regulations are reproduced hereunder:

> "148. **When application for court martial be made**:- (1) The Commanding Officer shall make an application for the trial of an offender by court martial in the following cases, namely:-
>
> (a) When an offence has been committed by a sailor, which it is beyond his power to try:
>
> (b) When the Commanding Officer considers that an offence has been committed by a sailor which is beyond his powers to punish adequately;
>
> (c) When any offence has been committed which he considers ought to be tried by court martial;
>
> (d) if the accused has exercised his option in accordance with these regulations to be tried by court martial;
>
> (e) When so directed by his superior authority.
>
> (2) If a Commanding Officer himself is to be tried, an application for trial shall be made by his superior authority.
>
> (3) In the case of an officer serving in Naval Headquarters, the application for trial

shall be made by an officer designated in this behalf by the Chief of the Naval Staff.

(4) In the case of an officer on the staff of an Administrative Authority, the application for trial shall be made by such officer as may be designated by the Administrative Authority.

(5) In the case of an officer serving a Naval establishment not commissioned as a ship, the application for trial shall be made by the head of that establishment, unless such establishment is under the command of a Commanding Officer of one of Indian Naval Ships.

(6) Where an officer other than a Commanding Officer is required to make an application for trial by court martial, references here in after to the Commanding Officer shall include references to such other officer.

149. Procedure for investigation and taking down summary of evidence:- (1) Before a Commanding Officer proceeds to make an application for trial by court martial he shall either investigate the case himself or appoint a suitable person to investigate the case and to record a summary of evidence.

(2) The investigating officer shall take down in writing the evidence of any person whose appearance to be relevant and the evidence of each witness after it has been recorded shall be read over to him and shall be signed by him or if he cannot write, his name shall be attested by his mark and witnessed by

the investigating officer as a token of the correctness of the evidence recorded.

(3) The evidence of the witness shall be recorded in the English language and if the witness does not understand the English language, the statement as recorded shall be interpreted to him in the language, which he understands and a notation shall be made to the effect.

(4) If owing to the exigencies of service or any other grounds including the expense and the loss of time involved the attendance of any witness cannot in the opinion of the investigating officer be readily procured, some other officer may be directed by the Commanding Officer to take the evidence of the witness, or a written statement of the witness relating to the charge shall be obtained and such statement shall be included in the summary of evidence."

40. The Navy Instructions 95/69 are also reproduced hereunder:

"**95. Classification of Moves on Attachment of Officers to other Ships/Establishments for disciplinary purposes**.

Officers against whom disciplinary actions is contemplated may, where necessary, be attached to other ships/establishments at the discretion of Chief of Naval Staff/Flag Officer Commanding-in-Chief, Western Naval Command, Bombay/Flag Officer Commanding-in-Chief, Eastern Naval

> Command, Vishakhapatnam/Commodore Commanding, Southern Naval Area, Cochin, for the purpose of investigation and progress of disciplinary cases. During such period officers will continue to be held against the appointments held by them immediately before attachment, and no replacement will be made until completion of the disciplinary proceedings.
>
> 2. Moves of Officers on attachment to other ships/establishments under para I above shall not, notwithstanding the provisions of Rule 16, Travel Regulations, be classified as permanent, even if the period of attachment exceeds three months, but will be treated as only temporary. Since such an attachment is not for the performance of any specific duty in the ship/establishment to which so attached, no daily allowance will be admissible for the period of halt with the ship/establishment concerned, unless an officer is detailed to perform some specific duty during such attachment.

41. The 2nd justification given by the respondents is that even otherwise the petitioner was borne on INS ANGRE in terms of Regulations 242 to 244, which are also reproduced for the sake of convenience:

> "242. Additional for Special Service,- Captain and other officers of the Executive Branch, borne on the books of the any of Indian Naval Ships as 'Additional, for special or particular service', shall never assume the charge and command, of the ships in which they are so borne, or any other charge or command, except that which may appertain to

the special or particular service for which they are borne, unless they receive from the Chief of the Naval Staff express authority to the contrary.

243. 'Additional' not for Special Service.- Captains and other officers of the Executive Branch who are borne on the books of any of Indian Naval Ships as 'Additional', but not for any special or particular service, shall take rank and command in the ships in which they are so borne, and be considered as if they belonged to the complements of such ships.

244. Other Officers 'Additional'. Officers of branches other than the Executive Branch, and all persons not included in the Regulations 242 and 243 who are borne on the books of any of Indian Naval Ships as 'Additional', shall perform the duties for which they are appointed, shall be considered as belonging to the ships in which they are borne, and shall take rank and precedence according to their respective positions in the Indian Navy."

42. A perusal of the aforesaid Regulations shows that the Captains and other officials of the Executive Branch borne on the books in the Indian Naval Ships as Additional for special or particular services (which in this case is the Materials Organisation (MO)), never assume the charge and command of the ship in which they are borne or any other charge and command except which may pertain to the special or particular service for which they are borne. As per Regulation 244, officers of the branch other than the executive branch and all persons not included in Regulations 242 and 243 which are borne on any of the Indian Naval Ships as Additional shall

> perform the duties for which they are appointed and aqre to be considered belonging to the ships in which they are borne and shall take rank and precedence according to their respective position in the Indian Navy. In terms of the aforesaid regulations, the petitioner who was borne on INS Angre as 'Additional' though assigned to Material Organisation, Mumbai was under the command of INS ANGRE for disciplinary proceedings and, therefore, his attachment with INS Angre was fully justified both on account of the Regulations stated above as well as the Navy Instructions."

The Delhi High Court upheld the appointment of the investigating officer and the attachment of Lt. Cdr M.P Verma.

14. Further, it may be mentioned that Regulations 242 to 244 of the Naval Ceremonial, Conditions of Service and Miscellaneous Regulations 1964 would not come in the way to render the attachment of the appellant with INS Angre to be ineffective. We do not find any force in the contention of the appellant that he was not attached with INS Angre and the Commanding Officer, INS Angre had no jurisdiction to issue charge sheet against the appellant.

15. Next contention made by learned counsel for the appellant is that though the court martial was convened on

16.10.2003, the warrant order for the convening authority was issued subsequently, i.e. on 20.10.2003. Without passing the convening order, the court martial as such was illegal. To counter this allegation, counsel for the respondents contended that the warrant ordering court martial is dated 20.10.2003 while the commission by the CNS is 14.10.2003, immediately after Admiral Madanjeet Singh was appointed as Flag Officer, Commanding in Chief. We do not find any illegality in the convening of the court martial.

16. The other technical issues related to non supply of copies of the charge sheet and the summary of evidence, which violated the principles of natural justice. A conjoined reading of Regulations 148, 149 and 151 of the Regulations for Navy Part II (Statutory) would make it clear that the statement of the accused, together with the summary of evidence, is to be considered by the authority concerned and thereafter either the accused is remanded for trial or the case is referred to superior authority for direction. Till such time, no provision stipulates that the charge sheet or the summary of evidence is to be given to the accused. Under Regulation 153, a circumstantial letter is raised to the convening authority and

along with the documents; the charge sheet, etc. are forwarded. Then charge sheet is drawn under Regulation 155. We are of the view that no prejudice has been caused to the appellant by not providing copies of the charge sheet and other documents, as it was not mandatorily to be furnished at that early stage.

17. Further, it was argued on behalf of the appellant that the convening authority appointed the members in violation of Navy Act Section 97(19) when it had the authority only to appoint the President of the court martial, who, in turn, was to summon the members junior to him. It was submitted that the convening authority later fabricated it to meet the requirements of Navy Act Section 97(20) by way of an afterthought. We find no force in such an argument as the convening authority had applied its mind to the documents before constituting the court martial. In the absence of specific allegation that the members were handpicked, no mala fide or bias can be attributed against the convening authority. Navy Act Section 97(20) provides that the officer convening the court martial or the senior naval officer present at the place where the court martial is to be held, may exempt by writing, under his hand

conveyed to the president of the court martial, any officer from attending as member on ground of sickness or urgent public duty. Navy Act Section 97(20) has a mandatory import and it is for the convening authority to decide as to which officer is qualified in terms of Navy Act Section 97(3) to (16) and can spare him on account of the operational duties. In the present case, a list of members was furnished. A bare perusal of the list would show that the members were not handpicked. If Section 97 is read along with Regulation 168, it would be clear that the convening authority shall have to send to the president a list of officers who are eligible to sit as members and exempt any officer from attending as member on ground of sickness or urgent public duty. In the given circumstances, we do not find any substance in this contention also.

18. On the basis of the evidence, both oral and documentary, adduced by the prosecution, the GCM found the appellant guilty of having committed the offences under Sections 60(d) and 54(2) of the Navy Act and under Sections 13()1)(d)(ii), 13(1)(e) and 13(2) of the Prevention of Corruption Act 1988 read in conjunction with Navy Act Section 77(2). However, counsel for the

appellant vehemently contended that the findings of the GCM were without properly appreciating evidence and mainly relying on the statements of interested witnesses. These witnesses deliberately withheld the truth and gave evidence on pressure from their superior officers. But counsel for the respondents has pointed out that the witnesses examined by the prosecution were associated with the work and there was nothing to discredit their statements. Despite cross examination at length, nothing has come out to favour the appellant.

19. Before proceeding further, we deem it proper to appreciate the evidence adduced by the parties during the course of trial, charge-wise. In Charge No. 1, it is alleged that on 18.7.2002, the appellant knowingly made a fraudulent statement for visit from Delhi to Mumbai and Halol and back to Delhi from AM 4.7.2002 to PM 7.7.2002, thereby committing the offence under Navy Act Section 60(d). Charge No.2 too is similar in nature, having made fraudulent statement regarding his visit from Delhi to Halol and Vapi/Mumbai and back to Delhi from AM 8.8.2002 to PM 11.8.2002. To prove these charges, the prosecution has examined PW 4 Lt Cdr Gogula

Sreenivasa Reddy and proved Exts P24 to P36. Ext.P24 relates to the false claims of TA, DA, accommodation, taxi, etc. When PW 19 K.S Subramanian, who was General Manager of M/s. Safari Industries (I) Ltd, Mumbai at the relevant time, stated that the company had received orders for supply of 5000 pieces of size 26 sailors suitcases valued approximately at Rs.32 lakhs vide order dated 17.5.2002 and 8400 pieces of 18 size sailor suitcases valued approximately at Rs.35 lakhs vide order dated 15.6.2002. It was also stated by PW 19 Subramanian that when the goods as per the supply order were ready, he had informed the inspecting authority - Director of Clothing & Victualling, Naval HQs, New Delhi (DCV, in short) to make inspection on 6th July. He was informed that the appellant himself would be coming for inspection from Mumbai. Accordingly, he booked air ticket for the appellant for 6th July morning and return on the same day. The flight time was 0600 and it reached Baroda at 0700 hours. Since the company did not have a guest house, a separate room was taken for the appellant at Hotel Express, Alkapuri. A car was also hired for picking the appellant from airport. After inspection, the appellant gave release note for 5000 suitcases to sailors for Mumbai. The company met the expenses of the appellant.

It has also come out in evidence that his second visit on 7.8.2002 was changed by the appellant himself to 8.8.2002 and accordingly changed tickets from Mumbai to Vadodara. This time also, the company met the expenses for travel and accommodation. But the appellant put forth the claim as if he had met the expenses, which is evident from the record. We find no reason to discredit the testimony of these witnesses.

20. Charge Nos. 3, 10 and 12 pertain to offences under Sections 13(1)(d)(ii) and 13(2) of the Prevention of Corruption Act read with Army Act Section 77(2), in that the appellant allegedly obtained pecuniary advantage abusing his position as a public servant. PW 1 Lt G.V Kiran Kumar, who has proved Exts.P7 and P8, has clearly established that two orders were made for the supply of 5000 numbers of suitcases, approximately costing Rs.32 lakhs and Rs.35 lakhs respectively. Further, in answer to Question Nos. 478, 479, 480, 481 and 483, PW 19 Subramanian has brought out that the appellant fixed inspection for both the orders. It was categorically stated by PW 21 Manimoy Sarkar, Deputy Area Manager of M/s. Safari Industries (I) Ltd that after the inspection on 8.8.2002, the

release note was given only on 21.8.2002. Further, he was informed by PW 19 over telephone that after the inspection, the appellant demanded 2% of the total value of the orders i.e. about Rs.1.4 lakhs. It was after getting this money, the release note was issued. The testimony of this witness remained intact and we do not find any reason to disbelieve his evidence.

21. With regard to Charge No.10, it has come out from the evidence of PW 23 Vijay Kumar Singhal, Proprietor of M/s. Computer Stationery, Mumbai, which was engaged in the supply of computer related items to Indian Navy, had received a call from the appellant to meet him. When he met the appellant, he demanded a VCD player by way of gratification and the witness gave Rs.8000/- in an envelope towards the approximate cost of a VCD player. The testimony of this witness also remained intact and we do not find any reason to discredit his version as well.

22. PW 18 Ashok Shah, Director of Morsun Coating Systems, a company supplying paints to Indian Navy, has proved Charge No. 12 against the appellant by making it clear that he gave an amount of Rs.20000/- to the appellant at his residence for clearing the bill of

10000 litres of heavy duty non-skid grey paint supplied by him. The testimony of this witness could not be impeached from the side of the appellant. Thus Charge Nos. 3, 10 and 12 also stand established against the appellant.

23. Charge Nos. 4, 5 and 6 pertain to offences under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act in conjunction with Navy Act Section 77(2) for having possessed money disproportionate to his known sources of income viz. salary. The prosecution has examined PW 14 T.R Vishwanathan Nair, Chief Manager, Syndicate Bank to prove Charge No. 4. He gave details of the saving bank account of the appellant, which reflected deposit of money. Exts. P41 to 44 clearly established that the appellant had amassed income beyond his known source of income. So far as Charge No. 5 is concerned, PW 13 Yogesh Raizada has produced the statement of account of the appellant from 16.12.2002 to 4.9.2003, evidenced by Ext. P58, which clearly established the deposit of Rs.80,000/-. Further, PW 12 R. Venkateshwaran, Assistant General Manager of Syndicate Bank produced Ext. P58, which showed the deposit of Rs.25,000/- in the account of the appellant. PW 22 Manu

Sharma, Officer of HDFC Bank has produced Ext. P79 statement of account, which showed deposit of Rs.2,50,000/- in the account of the appellant. Ext P78 revealed that a huge amount was credited to the account of the appellant, disproportionate to his known source of income i.e. salary. Furthermore, Charge No.6 against the appellant is proved through the evidence of PW 16 N. Devadiga, Officer of ICICI Bank, who produced Ext. P62 statement of account, which clearly established the deposit of Rs.1,50,000/- in the account of the appellant. PW 9 Sundeep Momaya, Manager, UTI Bank produced Ext. P61 statement showing deposit of Rs.50,000/- and PW 22 Manu Sharma, Officer of HDFC Bank produced a statement covering the period 1.1.2003 to 28.8.2008, which showed the deposit of Rs.45,000/- through cheque. The deposit of Rs.1 lakh is evident from the statement of PW 12 Venkateshwaran. From all these evidence, it is conclusively proved that the appellant had amassed a huge sum disproportionate to his known source of income. We do not find any reason to disbelieve the evidence of any of these witnesses as it has clearly established the charges against the appellant.

24. Charge No. 8 relates to the unbecoming conduct on the part of the appellant by accepting a gift of Rs.25,000/- from PW 25 Hemant R Mehta, Partner of M/s. Hemant Engineering Works, Thane, manufacturers and suppliers of davits. PW 25 has categorically stated that he handed over a sum of Rs.25,000/- to the appellant at his residence, which remained intact as there was no convincing explanation from the side of the appellant. Further, the material witnesses clearly deposed that the appellant used to demand money from them. The prosecution has examined PW 26 Sunil Mehta to prove Charge No.9, in that he allegedly accepted a gift of Rs.15,000/- from PW 26, Liaison Officer of M/s. Raksha Polycoats, Pune, suppliers of life jackets to the Indian Navy. It has come out from the evidence of PW 26 that he handed over Rs.15,000/- to the appellant at his residence.

25. It has been submitted by learned counsel for the appellant that he was implicated in the case and that the sentence awarded is disproportionate to the gravity of the offence. But we do not find any force in this contention. Suffice it to mention that in

corruption cases, no leniency or undue sympathy is required to be shown.

26. In view of the aforesaid discussion, we find no merit in the appeal and in the result, the appeal is dismissed.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER