



2025:DHC:1619



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Reserved on: 8th November, 2024****Pronounced on: 12th March, 2025**

+ CRL.A. 768/2014

RAM KUMAR

.....Appellant

Through: Mr. Sushil Bajaj, Mr. Bhavook Chauhan, Mr. Tushar Yadav & Mr. Aadithya Aravindh, Advocates.

versus

CBI

.....Respondent

Through: Mr. Atul Guleria, SPP, Mr. Pankaj Kumar with Mr. Aryan Rakesh, Advocates for CBI.

+ CRL.A. 789/2014

RAM KUMAR

.....Appellant

Through: Mr. Sushil Bajaj, Mr. Bhavook Chauhan, Mr. Tushar Yadav & Mr. Aadithya Aravindh, Advocates.

versus

CBI

.....Respondent

Through: Mr. Atul Guleria, SPP, Mr. Pankaj Kumar with Mr. Aryan Rakesh, Advocates for CBI.

CORAM:**HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present appeals under Section 374(2) of the Code of Criminal Procedure, 1973, (for short, 'CrPC') have been filed assailing the impugned judgment of conviction and order on sentence dated 30.05.2014 and

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07.06.2014 respectively, passed by learned Special Judge, P.C. Act (CBI-09), Central District Tis Hazari Courts, Delhi, whereby the appellants have been convicted in CC No. 91/2011 arising out of FIR No. RC No. 48(A)/04, under Section 7 and Section 13(2) read with Section 13(1) of the Prevention of Corruption Act, 1988, (for short, 'PC Act) registered with CBI.

2. *Vide* the aforesaid judgment of conviction and order on sentence, appellant, Ram Kumar (HC No. 391/W) s/o Sh. Hari Ram in **CRL.A. 768/2014**, (hereinafter referred to as 'A-1') was sentenced to undergo rigorous imprisonment for a period of 3 years for offence punishable under Section 7 of the PC Act with fine of Rs. 20,000/-, rigorous imprisonment for a period of 3 years for offence punishable under Section 13(2) read with Section 13(1)(d) of the PC Act with fine of Rs. 20,000/- and rigorous imprisonment for a period of 3 years for offence punishable under Section 120B read with Section 7 and Section 13(2) read with Section 13(1)(d) of the PC Act with fine of Rs. 20,000/-. Whereas the appellant, Ram Kumar (HC No. 232/W) s/o Sh. Lakhi Ram in **CRL.A. 789/2014**, (hereinafter referred to as 'A-2') was sentenced to undergo rigorous imprisonment for a period of 3 years for offence punishable under Section 7 of the PC Act with fine of Rs. 10,000/-, rigorous imprisonment for a period of 3 years for offence punishable under Section 13(2) read with Section 13(1)(d) of the PC Act with fine of Rs. 15,000/-, and rigorous imprisonment for a period of 3 years for offence punishable under Section 120B read with Section 7 and Section 13(2) read with Section 13(1)(d) of the PC Act with fine of Rs. 15,000/-.

3. It is pertinent to note that in **CRL.A. 789/2014** filed on behalf of the A-2 (Ram Kumar, HC 232/W), after the death of the latter, his wife filed an



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application being **CRL.M.A. 8823/2023**, which was allowed by this Court *vide* order dated 25.10.2024 and the appeal filed by A- 2 was allowed to be pursued by his wife.

FACTUAL BACKGROUND

4. Brief facts, necessary for the disposal of the present appeals, are as follows: -

- i) The present appellants, A-1 and A-2, were posted as Head Constable in Delhi Police at PS Uttam Nagar during the year 2003.
- ii) During 2002 and 2003, one Chetan Prakash s/o Babu Lal (hereinafter referred to as, 'complainant/PW-3') had captured several personnel of Delhi Police and Excise Department in a video taking money from bootleggers in the area under the jurisdiction of Police Station Uttam Nagar and the areas adjacent to it, in order to expose their corrupt practices. He had, then, filed a writ petition, i.e., **W.P.(CRL) 367/2004**, before this Court stating that he had recorded videos of police personnel and other government officials taking bribe from bootleggers and thereby seeking protection and direction for investigation by CBI in this regard. *Vide* order dated 04.10.2004, a Coordinate Bench of this Court directed the CBI to investigate the present matter. Accordingly, in compliance of the order passed by this Court three separate Regular Cases were registered with CBI, ACB, New Delhi *vide* FIR Nos. RC DAI 2004 A 0048; RC DAI 2004 A 0049; RC DAI 2004 A 50.
- iii) The proceedings in the present case arises out of RC DAI 2004 A 0048 as this RC is in respect of the incidents falling within the territorial jurisdiction of PS Uttam Nagar.



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iv) The complainant/PW-3 has provided one VHS video cassette and five HI-8 (small) video cassettes to CBI through this Court which then, formed the basis of the present investigation. One of the places where complainant captured the video films, in a clandestine manner, was in front of the residential premises of Shri Jasbir Sansi and, his wife, Smt. Bina Sansi, who used to sell liquor bottles illegally from the premises of their residence situated at C-233, DDA Flats, Bindapur, PS Uttam Nagar. Several cases under the Excise Act were also stated to have been registered against the said Sansi couple at PS Uttam Nagar.

v) During the course of investigation, it was revealed that video films in question were prepared by the complainant/PW-3 on HI-8 video cassettes and he had copied its contents in VHS video cassette. Five such HI-8 and one VHS cassettes were kept in possession of CBI in sealed condition. The contents of these video films were shown to the complainant/PW-3 and several Police personnel of Delhi Police and the persons being featured in the video films were identified.

vi) The appellants were posted and functioning as public servants in Delhi Police at PS Uttam Nagar at the relevant point in time and when the said video film/recording was captured, they were identified as being featured in that video. A-1 and A-2 were alleged to have been caught on camera demanding and accepting money from aforesaid Jasbir Sansi and, his wife, Bina Sansi, in front of their residential premises. In one video clipping, A-2 is seen sitting on a chair in front of the house of the aforesaid Sansi couple and Bina Sansi is seen selling liquor bottles, and thereafter, A-2 was allegedly seen accepting some currency notes from Bina Sansi and after counting them,



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keeping the same in his pocket. Whereas in another scene, A-2 and A-1 were allegedly seen together in front of the house of the said couple and A-2 demands and accepts money from Bina Sansi and A-1 is allegedly seen keeping the said money in his pocket. The money accepted by the appellants, A-1 and A-2 from Bina Sansi was not legal remuneration, but rather an illegal gratification.

vii) The said video clipping in question was shown to the complainant/PW-3 and several police personnel of Delhi police and they have identified both the appellants in the said video clipping. The voice specimen of the appellants was procured and the said videocassettes along with the voice specimen of the appellants were sent to CFSL for voice spectrograph examination. The CFSL, New Delhi *vide* its report Nos. CFSL-2007/P –0171 and CFSL – 2007/P – 0185 dated 16.04.2007 had opined that the voice specimen of the appellants was a match with the voice which was there in the said video clippings.

viii) The original HI – 8 cassettes were forwarded to CFSL, Chandigarh for obtaining report on editing and tempering aspect. CFSL, Chandigarh *vide* its report No. CFSL/1255/06/Phy/187/06/1091 dated 19.12.2006 has opined that the video recordings in the said cassettes were camera originals and free from editing.

ix) Thus, after the completion of investigation, the appellant was stated to have committed offences punishable under Section 120B of the IPC read with Section 7 and Section 13(2) read with Section 13(1)(d) of the PC Act. The sanction for prosecution of both the appellants were obtained separately from the competent authorities. Learned Trial Court, *vide* order dated 20.08.2010,



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had framed the charges for the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the PC Act against both the appellants. Charge for the commission of offence punishable under Section 120B of the IPC read with Section 7 and Section 13(1)(d) read with Section 13(2) of the PC Act was also framed against both the appellants.

x) The prosecution in order to prove the aforesaid charges levelled against the appellant as well as the co-accused had examined 16 witnesses and in order to dispel the case of the prosecution the appellants had also led defence evidence comprising of one witness, namely Inspector Rajvir Singh. Learned Trial Court after analysing the prosecution evidence, the statements of the appellants recorded under Section 313 of the CrPC and the defence evidence led by the present appellants had found the latter guilty of the charges levelled against them and sentenced them accordingly. Hence, the present appeals have been filed assailing the common impugned judgment of conviction and order on sentence passed by the learned Trial Court.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

5. Learned counsels appearing on behalf of the appellants, in support of the present appeals, has made the following submissions: -

i) Learned Trial Court had erroneously convicted the appellants on the basis of the prosecution evidence placed on record during the course of trial. The fundamental basis for the conviction of the appellants has been the alleged video recordings and its contents contained in the cassette and perusal of the record pertaining to the said video recordings would show that they were fabricated and tempered.



ii) It has been argued that the prosecution had tendered two expert reports, Ex. PW-4/A and Ex. PW-10/A, in respect of the relevant video recordings pertaining to the present case and both these reports are substantially in contrast to each other. It is the case of the appellants that there are various discrepancies in the said video recordings relied upon by the prosecution and the learned Trial Court had wrongly relied upon them to convict the appellant. Reliance has been placed on **Tulsiram Kanu v. The State, AIR 1954 SC 1**, to content that when there is a difference of opinion in the reports relied on by the prosecution, a duty is casted on the latter to explain the difference and mere a production of the report does not, under any circumstance, would prove anything against the concerned accused.

iii) It is submitted that the said two sets of scientific reports have given contradictory findings, thereby falsifying the case of the prosecution. The contradiction in the said reports would cast serious doubt on the authenticity and credibility of the said video recordings. In view of the same, it is contended that the said video recordings alongwith both the expert reports are liable to be discarded.

iv) It is pointed out that PW-10, expert witness, in his report (Ex. PW-10/A) had stated that there were a number of re-recordings in the cassettes used in the present case. Perusal of the report given by PW-10 would show that there were various additions and deletions in the said video cassettes. It is further the case of the appellant that the alleged video recordings are not substantive piece of evidence and can only be used for corroboration purposes.



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v) It is further submitted that there is no witness, other than the complainant/PW-3, who had made any allegation or supported the case of the prosecution in respect of the demand and acceptance of bribe by the appellants, and moreover, the testimony of the complainant/PW-3 could not form the sole basis of conviction as the same is hearsay. As pointed out hereinabove, the video recordings cannot be used for corroborating the testimony of the complainant/PW-3 as the same are itself not cogently proved by the prosecution. It is further submitted that the complainant/PW-3 is not a credible witness as he is involved in a number of criminal cases and is himself into the business of selling illicit liquor. A number of cases have also been registered under Excise Act against the complainant/PW-3.

vi) It is further contended that that the lady, Bina Sansi, from whom the appellants are stated to have demanded and accepted the illegal gratification has not been examined during the course of trial.

vii) The evidences placed on record does not show that the appellants had demanded any illegal gratification from the said lady. Therefore, the charge of demand of illegal gratification against the appellant stand falsified.

viii) Insofar as the sanction for prosecution against the appellants are concerned, it is submitted that PW-6, the person competent to grant the sanction, had, in his cross-examination, had stated that he did not remember whether any video cassette/recording was produced before him for the grant of sanction. Attention of this Court has been drawn towards the testimony of PW-6 to show that he had stated that the video recordings, which forms the basis of the case of prosecution, were not watched by him as he had gone by



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the CFSL report submitted to him and in view of the same, he did not consider it necessary to watch the said video recording. Therefore, it is argued that the sanctioning authority had not applied its mind while considering the sanction for prosecution of the appellants and the same were passed mechanically without due application of mind. Reliance has been placed on **Tirath Prakash v. State, 2001 SCC OnLine Del 646: 2001 Cri LJ 4028**, to contend that the validity of the sanction depends upon the material placed before the sanctioning authority and the fact that all the relevant facts, material evidence have been considered by the sanctioning authority which must apply its own independent mind to the said relevant material facts of the case and the evidences collected during the course of investigation. Any case instituted without a proper sanction must fail because the same strikes at the root of the case of the prosecution and renders the entire proceedings *void ab initio*.

Additional Submissions on Behalf of Appellant/A-1

ix) It is the case of this appellant (A-1) that he was not present at the alleged crime spot which has been captured in the aforesaid video recording on 16.11.2003, when as per the case of the prosecution has alleged to have demanded and accepted the bribe from Bina Sansi. It is pointed out that perusal of the video cassette (Ex. P-5) shows that it had started at 04:03 PM and ended at 04:38 PM, however, as per the defence evidence led by him, he was on duty elsewhere from 03:30 PM to 07:00 PM.

x) Attention of this Court has been drawn towards the testimony of DW-1, Insp. Rajvir Singh and it is submitted that, as per the entry No. 5 (Ex. DW-1/A) in *roznamcha* of the Police Post East Uttam Nagar, PS Uttam Nagar, the



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appellant had gone with DW-1 for law-and-order arrangement at the *Nagar Kirtan* in JJ Colony, Pankha Road, Gurudwara, at around 03:30 PM and, as per entry 6 (Ex. DW-1/B) in the said *roznamcha*, he had returned to *chowki* at around 07:00 PM. It is further submitted that the learned PP for CBI appearing in the learned Trial Court had not examined DW-1 in this regard. Reliance has been placed on **Dudh Nath Pandey v. State of UP, (1981) SCC Cri 378**, to contend that defence witnesses are to be treated at par with the prosecution witnesses.

xi) It is further the case of this appellant that it is A-2, the appellant in **CRL.A. 789/2014**, who had demanded and accepted the bribe from Bina Sansi at their residential premises with a view to allow her to sell illegal liquor. It has also been argued on behalf of this appellant that the competent authority to grant sanction for prosecution against the appellant(s) have also not taken this fact into consideration, thus, the sanction for prosecution *qua* this appellant has been passed with non-application of mind.

xii) Thus, it was prayed that the impugned judgment of conviction and order on sentence be set aside and the present appellant be acquitted.

SUBMISSIONS ON BEHALF OF THE RESPONDENT/CBI

6. *Per contra*, learned SPP for CBI has made the following submissions: -

i) PW-1, Insp. Surender Singh; PW-2, Constable Bhim Thakur and PW-7, Constable Ram Naresh, had identified the present appellants through the said video recordings captured by the complainant/PW-3 and has substantially proved the fact that they were posted at PS Uttam Nagar at the said relevant point in time. It is further the case of CBI that the concerned video cassettes



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and CDs were meticulously preserved and presented during the trial before the learned Trial Court as the same can be seen from Ex. PW-3/3, document identification memo.

ii) Testimonies of forensic experts, PW-4 and PW-10, have confirmed the authenticity of the video as well as the audio recordings and have also verified the originality and unaltered status of the recordings. The expert reports being Ex. PW-4/A and PW-10/A duly substantiates the evidentiary value of the video recordings presented before the learned Trial Court and no evidence of tampering as alleged by the appellant has been brought forward by him. More so, no suggestion has been put to the complainant/PW-3 in this regard. It is further the case of the appellants that there is no evidence which could show that the shot containing audible conversation between the appellants and Bina Sansi was tampered.

iii) Crime Scene was identified by the complainant and both the appellant and co-accused were seen and identified in the video recordings as being indulged in demanding and accepting illegal gratification. It is pointed out that the presence of the present appellants has been duly proved at the crime scene through the testimonies of the complainant/PW-3, PW-1 and PW-2. It is further submitted that the presence of both the appellants has also been corroborated at the crime scene through the testimonies of PW-4 and PW-10, the experts who examined the said video recordings.

iv) It is the case of the CBI that from the perusal of the video recordings wherein the present appellants have been featured, they can be seen demanding and accepting bribe and the same has also been corroborated



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through the testimonies of the various prosecution witnesses as noted hereinabove. It is further submitted that the crime scene was identified by complainant/PW-3 and both the appellants were positively identified in the video recordings as engaged in corrupt and illegal activities.

v) It is submitted that the learned Trial Court has after detailed analysis placed reliance on the said video clippings/recordings to convict the present appellant and the said findings need not be interfered with as this Court did not have the occasion to scrutinize the said evidence and the contents of the said recordings. It is further submitted that no objection was raised by the appellant during the trial while the said video recordings were admitted by the learned Trial Court. Therefore, the said oversight cannot be agitated now. Reliance has been placed on **P.C. Purushothama Reddiar v. S. Perumal, (1972) 1 SCC 9**, to contend that if objections to the admissibility of an evidence has not been raised at the stage of its exhibiting, then, the same cannot be raised at the appellate stage.

vi) It is further submitted that the prosecution was aware of the involvement of Bina Sansi in the present case, however, due to her demise, prosecution was unable to examine her as witness.

vii) Reliance has been placed on **B. Noha v. State of Kerala, (2006) 12 SCC 277**, to contend that when the voluntary and conscious acceptance of money has been proved on record by the prosecution then, no further burden is cast on the latter to prove by direct evidence the demand or motive behind the said act and the same can be deduced from the facts and circumstances of the case. Reliance has also been placed on **Hazari Lal v. State (Delhi**



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Admn), AIR 1980 SC 873, to contend that the conviction of a person accused of commission of offences punishable under the Prevention of Corruption Act can be based on the statement of trap officer.

viii) It is further submitted that no objection or questions have been put by the appellant to the expert witnesses during their cross-examinations regarding the authenticity or credibility of the said video recordings and the same is sought to be challenged by him in the present appeal. Reliance has been placed on **Mohd. Ibrahim and others v. Munni @ Zainab Bee, (2007) 1 ALT 511**, to contend that when the facts stated in the examination-in-chief of a witness are not disputed in the cross-examination, then, the same should be deemed to be admitted. Therefore, failure of appellant to dispute the authenticity of the video recordings during the cross-examinations of PW-3, PW-4 and PW-10 suggests an implied admission of his part in respect of the validity of the said recordings.

ix) It is further submitted that the testimonies of PW-3 and PW-11 has cogently proved the charge of the demand and acceptance of illegal gratification by the appellant and no definite plea has been taken by the latter whereby aspersions could be casted on their testimonies. Reliance has been placed on **Shahaja @ Shahajan Ismail Mohd. v. The State of Maharashtra, 2022 SCC OnLine SC 883**, to contend that the aforesaid two witnesses, who were present at the spot where the bribe was handed over, have given consistent statements and there are no significant contradictions or improbabilities in their statements that would undermine their reliability.



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x) Learned SPP for CBI has submitted that **State (GNCT of Delhi) v. Netrapal Singh & Ors., 2024:DHC: 136**, is not applicable to the facts of the present case and the same is distinguishable as, in the said case, original of the video recording (footage) was not produced before the Court. In the said case, the Respondents therein were acquitted by the learned Trial Court and the same was affirmed by this Court. Thus, legal principles applicable in the present case are different to that which have been followed in the **Netrapal's case**. Moreover, in the present case, the complainant/PW-3 was an eye-witness, however, this was not the case in **Netrapal's case**. Thus, it was prayed that the impugned judgment of conviction and order on sentence be upheld.

ANALYSIS AND FINDINGS

7. Heard learned counsel for the parties and perused the record.
8. In the present case, the appellant has been convicted for offence punishable under Section 7, Section 13(1)(d) read with Section 13(2) of the PC Act. A Constitutional Bench of the Hon'ble Supreme Court in **Neeraj Dutta (supra)** had dealt with the following issue: -

“3. Thus, the moot question that arises for answering the reference is, in the absence of the complainant letting in direct evidence of demand owing to the non-availability of the complainant or owing to his death or other reason, whether the demand for illegal gratification could be established by other evidence. This is because in the absence of proof of demand, a legal presumption under Section 20 of the Prevention of Corruption Act, 1988 (for short “the Act”) would not arise. Thus, the proof of demand is a *sine qua non* for an offence to be established under Sections 7, 13(1)(d)(i) and (ii) of the Act and dehors the proof of demand the offence under the two sections cannot be brought home. Thus, mere acceptance of any amount allegedly by way of illegal gratification or



recovery thereof in the absence of proof of demand would not be sufficient to bring home the charge under Sections 7, 13(1)(d)(i) and (ii) of the Act. Hence, the pertinent question is, as to how demand could be proved in the absence of any direct evidence being let in by the complainant owing to the complainant not supporting the complaint or turning “hostile” or the complainant not being available on account of his death or for any other reason. In this regard, it is necessary to discuss the relevant Sections of the Evidence Act before answering the question for reference.”

Answering the aforesaid issue, the Constitution Bench held as under: -

“88. What emerges from the aforesaid discussion is summarised as under:

88.1. (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

88.2. (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

88.3. (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

88.4. (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded



gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

88.6. (f) In the event the complainant turns “hostile”, or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

88.7. (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the



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said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

88.8. (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.”

(emphasis supplied)

9. In view of the aforesaid legal position, the prosecution needs to establish both demand and acceptance of a bribe. The Hon’ble Supreme Court in **Neeraj Dutta** (*supra*) has categorically held that in both the cases of offer to pay by the bribe giver or when the public servant makes a demand, both would have to be proved by the prosecution as a fact in issue. Therefore, mere acceptance or receipt of illegal gratification would not be sufficient to bring the case of the prosecution under Section 7 or Section 13(1)(d) and Section 13(2) of the PC Act. Presumption regarding demand and acceptance or an offer to pay of illegal gratification can be inferred only when the foundational facts have been proved by oral or documentary evidence.

10. In the present case, the learned Trial Court while convicting the appellant has solely relied on the testimony of complainant/PW-3 and the video cassette (Ex. P-2) which were produced by the said witness and played before the Court during the course of trial. Learned Trial Court while convicting the present appellant has exclusively relied on the said video footage played before it, to presume that the appellant had made a demand and accepted the bribe from one, Bina Sansi. It is a matter of record that the aforesaid Beena Sansi, was neither examined before the learned Trial Court nor was cited as a witness. The relevant portion of the PW-3’s testimony



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recorded before the learned Trial Court in respect to the video played is reproduced herein under: -

“Let the said CD be played on DVD Player and further examination-in-chief of the witness continue:-

I have seen the screen of DVD Player wherein a video scene is visible, which was recorded at night, in which H.C. Ram Kumar (A-2) is seen sitting on a chair in front of house of Shri Jasbir Sansi. After seeing children lying in open on a cot, H.C. Ram Kumar (A-2) is saying "Bachche Bimar Pad Jayenge", "Kar Liya Rajinama". On which Shri Jasbir Sansi replied saying that "Paise Bahut Jyada Maang Raha Hain, Chaar Hazaar". H.C. Ram Kumar (A-2) said "Ghane Maang Raha Tha Woh". Shri Jasbir Sansi replied saying "Woh To Pandrah Maang Raha Tha". Shri Jasbir Sansi is saying "Inka Mahina De Diya Kya". Smt. Bina Sansi wife of Shri Jasbir Sansi replied saying that "Mahina Le Gaya Tha Yeh, Isne Usko De Diya". H.C. Ram Kumar (A-2) is saying "Woh Dusra Hawalदार Ram Kumar Sath Mein Tha, Sau Rupay Le Gaya Tha, Main Thodi Le Kar Aya Tha Usko, Woh Tumhara Case Hal Kara Raha Tha". On which, Smt. Bina Sansi is saying "Tu Kisi Kisi Ko Le Kar Ata Hain", then H.C. Ram Kumar (A-2) is saying Main Nahi Le Kar Aya Tha, Woh Tumhara Case Hal Karane Aya Tha, Mujhe Kya Chaav Chad Raha Hai". Shri Jasbir Sansi is saying "Yeh Dekho Grahak Ka Time Hai, Grahak Nahi Aa Raha, Saade Aath Baj Rahe Hain". H.C. Ram Kumar (A-2) is seen accepting something from Smt. Bina Sansi. Smt. Bina Sansi is further saying "Hum Agle Mahiney Band Kar Denge, Humara Dhanda Hai Hi Nahin". H.C. Ram Kumar (A-2) is saying "Election Main To Vaise Hi Pilate Hain". After that, H.C. Ram Kumar (A-2) had left the place and thereafter, Smt. Bina Sansi is seen selling liquor to many unknown customers.

I had recorded these video scenes from my Handi Video Camera of Sony Make in Hi-8 Video Cassettes, which I had submitted to Hon'ble Delhi High Court.

I have known Smt. Bina Sansi and her husband Shri Jasbir Sansi since at that time, we all had been residing in the same area. As such I had identified them i.e. Smt. Bina Sansi and her husband Shri Jasbir Sansi and their voices in the said Compact Discs. I had also identified both accused persons present in the Court as I had seen them while recording



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video cassettes and hearing their voices through Mike affixed on the tree, under which they were sitting.”

11. As already noted hereinabove, the said lady, Bina Sansi was never examined before the learned Trial Court, however, her husband, Jasbir Sansi, was examined as PW-11, who, in the said video clipping, had identified his house as well as lady featured in the said video recording, Bina Sansi, his wife. He further stated that there was some conversation between the present appellants and his wife regarding the accident of his son-in-law. He further stated that he cannot say anything as to what transpired between his wife and present appellants. He had further stated that present appellants had visited his home for the first time. Perusal of the aforesaid testimony of the complainant/PW-3 shows that Jasbir Sansi (PW-11) was also seen in the video cassettes played in the Trial Court, however, PW-11 has not stated anything regarding his own presence when the same was shown to him.

12. It is important to note that the video relied upon by the learned Trial Court has been recorded with the help of complainant/PW-3 who was not privy to the conversation between the present appellant and lady Beena Sansi. Complainant/PW-3 in his cross-examination dated 15.03.2013 has stated as under: -

“Q.; Can you tell the Court as to what distance your camera was located from the scene?

A.: Near about 25 feet.”

Thus, admittedly the complainant/PW-3 was not present at the spot at the time when the said videos were captured.



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13. It is also the case of the prosecution that the video in the present case was of the house of Jasbir Sansi (PW-11). There is no site plan prepared by the Investigating Officer Mukesh (PW-15) to show the place from where the video was shot. It is interesting to note that even as per the case of the prosecution, complainant/PW-3 claimed to have shot series of videos at the house of Jasbir Sansi (PW-11) wherein, other police officials were also allegedly caught taking bribe. There were different Corruption Cases arising out of the present FIR-RC registered in respect of different police personnel. In case CC No. 89/2011 titled as, “CBI v. Meghraj & Anr.”, this witness (PW-3 herein) who was examined as PW-4 in the said case had stated that the video in the said case was shot by him from a plot of land with boundary wall opposite to the house of the Jasbir Sansi from where all the persons were seen sitting. It has been further stated that the mic was connected with his handycam camera. In the present case as well, complainant/PW-3 was using a mic and from his cross-examination recorded on 15.03.2013, following has come on record regarding the position of the mic: -

“Q.: Where was the mike located?

A.: The mike was fixed on the tree under which all the person were seen and sitting. The same must have been four or 5 feet above the head of the person sitting.

This mike was connected with the handycam camera.”

14. This Court is conscious of the fact that the aforesaid statements given by this witness (PW-3) in different Corruption Cases arising out of same FIR-RC cannot be used for the purpose of the present appeal, however, it is noted that since the appeals arising out of the aforesaid Corruption Cases are also



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being disposed of *vide* separate judgments of the even date, this Court had the opportunity to examine the cross-examinations of the complainant/PW-3, Chetan Prakash, in the aforesaid Corruption Cases as well and specially with regard to mode and manner in which the videos were recorded by this witness, PW-3/complainant.

15. Be that as it may, even in the present case, the prosecution, apart from Jasbir Sansi, PW-11, has not examined daughter of Beena Sansi, who was alleged to be seen in the video captured by complainant/PW-4. No voice analysis of Beena Sansi has been placed on record. Conversations between Beena Sansi and the appellant could not have been heard by the complainant/PW-3.

16. As already highlighted hereinabove, the Hon'ble Supreme Court in **Neeraj Dutta** (*supra*) has categorically held that both in case of an offer to pay by the bribe giver without there being any demand from the public servant and when the public servant makes a demand and the bribe giver accepts the demand and tenders the demand of gratification, such offer or the demand respectively have to be proved by the prosecution as a fact in issue. In the present case, admittedly, Beena Sansi has neither been cited as witness nor examined as witness during the course of trial. There was no prior complaint on behalf of Beena Sansi or any other person with respect to any demand of illegal gratification or bribe made by the present appellant. Even an offer to pay bribe by the giver, i.e., Beena Sansi, has not been proved on record. The version of the complainant/PW-3, Chetan Prakash, thus, comes within the realm of hearsay evidence.



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17. In the present appeal, it is not the case of the prosecution that there were complaints made by Bina Sansi or her husband, PW-11, at any point of time to the CBI with regard to the demand of bribe by the present appellant. It is complainant/PW-3 who claims to have recorded the events as he wanted to help Jasbir Sansi (PW-11) and his family members from illegal extortion of money committed by the police personnel from Delhi Police. It is noted that the complainant/PW-3 in the very first para of his examination-in-chief itself, had stated as under: -

“I am a Property Dealer by profession. I had prepared audio & video cassettes showing 250 staff/officials of Delhi Police & Excise Department taking bribe different places in Uttam Nagar Area. I had taken the said cassettes to ACP Rajbir Singh and had shown him the same. Despite assurance by ACP, Rajbir Singh and DCP Ashok Chand of Special Cell, no action was taken. However, a raid was conducted at my residence in which 30 cassettes were taken away by ACP Rajbir Singh, Inspector Mohan Chand Sharma & other police officials. I was implicated in a false case by the special cell of the Delhi police. When I came back from the jail, I filed a writ petition before Hon’ble Delhi High Court and along with it, also filed 5 cassettes.”

This reflects that the complainant/PW-3 did bear grudge against police officials.

18. In the present case, equally important is the fact that Jasbir Sansi (PW-11), who was the husband of Bina Sansi, has not stated anything about any demand of bribe. Thus, the demand of bribe on behalf of the appellant cannot be proved in absence of examination of Bina Sansi.

19. Learned Trial Court has heavily relied upon the video cassette (Ex. P-2) which was sent to FSL. However, *vide* a report (Ex. PW-10/A) dated 19.12.2006 regarding the said video cassette, it has come on record that the



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video cassettes were “*rerecorded (over recording in order to delete some portion that too in-camera)*”. It is relevant to note that the device, i.e., handycam, by which the said videos were alleged to have been recorded by complainant/PW-3 was never produced before the CBI nor sent to the FSL for examination.

20. Learned counsel for the appellant had also relied upon **Netrapal Singh (*supra*)**, whereby State’s appeal against acquittal of the respondent/accused therein was dismissed by this Court. It is pertinent to note in the said appeal, the same complainant/PW-3, Chetan Prakash, was the main witness and a similar video cassette was being relied upon in order to establish the case of the prosecution. In the said case as well, the video cassette was sent for analysis and a report was given that the recording was found free from any addition, deletion, or tampering. In the said case, FSL report, however, had stated that it could not opine whether the video footage therein was original as the recording device was not sent for FSL examination. The relevant paras of the said judgment read thus: -

“**29.** In the aforesaid context, the observation made by the learned Special Judge with regard to admissibility of the said video cassette (Ex. P-1) needs to be examined. The learned Special Judge, in his finding, has examined that the testimony of Chetan Prakash Sharma (PW-4) as recorded on 18.04.2015 and made the following observations:

“7.1.2...A perusal of the testimony of Chetan Sharma (PW-4), as recorded on 18.04.2015 indicates that the sequence at Sri. No.-IO displays the starting time of recording as 19 : 22 Hours and concluding time as 19 : 42 Hours. It was observed by the court that the sequence had jumped time from 19 : 27 : 23 Hours to 19 : 28 : 02 Hours and 19 : 30 Hours to 19 : 38 Hours. Meaning thereby, either the recording was stopped in between the sequence, or, some portion has been deleted, after the recording had been done. The



FSL report being silent as regards this sequence; in my opinion, the same is not a complete & correct report. Similarly the FSL report has not noticed and opined about a TV clip of ETC. Channel, in between the alleged recordings of corrupt activity.”

30. Similarly, in Para 7.2, it has been observed as under:

“7.2 However, in the absence of proof of actual demand of bribe, it can be held that there is any incriminating material against the accused persons. Mere identification of their pictures in cassette Bx.P-1 can not be said to be incriminating as cassette Ex.P-1 itself is \ inadmissible in evidence. The video footage contained in Bx.P-1 has not been opined by FSL to be the original recording. It has been demonstrated by the Id. defence counsels that the video cassette contains clippings of ETC. Channel in between the alleged incriminating clips, which demonstrates that the cassette is not original recording. It was copied on a pre-recorded cassette. **It has also not been brought on record that the recording device had the provisions of making direct recording on the cassette or it first recorded on a memory stick and then transferred the contents to cassette. The recording device was admittedly not sent to FSL for analysis. Thus, there is no evidence that video recording contained in cassette Bx.P-1 is original recording and, thus. Primary Evidence admissible u/sec-62 of the Indian Evidence Act. In the absence of certificate u/sec.-65/B of the Indian Evidence Act, the cassette Ex.P-1 is apparently inadmissible as Secondary Evidence, as well.** View taken by the Hon'ble Supreme Court of India in *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473's case is as under:—

“Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned



under sub section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i. e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions ulsec.-65-B(2) of the Indian Evidence Act-

- (i) The electronic record containing the information should have been produced by the computer, during the period over, which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawfid control over the use of that computer;
- (ii) The information of the kind contained in electronic record or of the kind from, which the information is derived was regularly fed into the computer in the ordinary course of the said activity;
- (iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time the break or breaks had not affected either the record or the accuracy of its contents; and
- (iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity. U/sec-65 (4) of the Indian Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:
 - (a) There must be a certificate, which identifies the electronic record containing the statement;
 - (b) The certificate must describe the manner in which the electronic record was produced;
 - (c) The certificate must furnish the particulars of the device involved in the production of that record;
 - (d) The certificate must deal with the applicable conditions mentioned u/sec-65 B(2) of the Indian Evidence Act; and
 - (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.”

(emphasis supplied)



31. The aforesaid analysis of the learned Special Judge, that the contents of the video cassette, as played during the course of evidence, were on some other prerecorded data and there were chances that the recording was stopped in between or some portions were deleted, is a possible view. **It is also pertinent to note that Dr. SK Jain (PW-11), in his testimony, also submitted that whether the recording in the said cassette was original could not be determined as the recording device was not sent to FSL despite request for the same.** Furthermore, in the cross-examination of Chetan Prakash Sharma (PW-4), he asserted that he used a new blank cassette between 14.10.2005 to 22.10.2005. However, the same is contradictory as the cassette (Ex. P-1) which was played during the course of evidence contained clippings of ETC. channel. Finally, the fact that the said cassette (Ex. P-1) was not supported by a certificate under Section 65B of the Indian Evidence Act, the same could not be admitted as secondary evidence, as it had come on record that there was no evidence that the recording contained in the cassette (Ex. P-1) was the original recording.”

(emphasis supplied)

21. In the present case as well, the complainant/PW-3, Chetan Prakash, in his cross-examination recorded on 27.01.2012 has stated as under: -

“In the Handycam camera, which I had, VHS cassette cannot be played. It is correct that the Handycam camera which I had used was a digital camera and it had a memory card as well. I had not given the said memory card either to the High Court or to the CBI. (Vol.) I had not used the said memory card at all. There was no inbuilt memory or memory card in the Handycam camera. (Vol.) the memory card is only for still photographs and not for video recordings”

22. Thus, the said camera was never produced before the FSL to ascertain whether it had a slot for photo memory card or not or whether these cassettes were from the said memory card. The FSL expert PW-10, has himself in his report, Ex. PW-10/A, had stated that the video cassettes were “*rerecorded (over recording in order to delete some portion that too in-camera)*”.



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23. In these circumstances, in the considered opinion of this Court it is not safe to rely upon videography as the same cannot take place of the primary evidence, i.e., the statement of Beena Sansi, in respect of the fact that whether she had offered bribe or there was a demand of bribe from the appellant. In absence of any other corroborative evidence, conviction for the offences punishable under Section 7 and Section 13(1)(d) of the PC Act cannot be sustained. Again, it is reiterated that the present case is not one, where complaint was made and verification had been done with regard to its contents and the proceedings were conducted in pursuance of such a complaint.

24. In view of the aforesaid circumstances, the prosecution has not been able to prove their case beyond reasonable doubt against the present appellants.

25. In the totality of the facts and circumstances of the present case, the present appeals are allowed and impugned judgment of conviction and order of sentence dated 30.05.2014 and 07.06.2014 respectively are set aside. Both the appellants stand acquitted of the charges levelled against them.

26. Bail bonds of the appellant, Ram Kumar (HC No. 391/W; A-1) s/o Sh. Hari Ram in **CRL.A. 768/2014**, stand discharged.

27. Pending applications, if any, also stand disposed of accordingly.

28. Copy of the judgment be sent to the concerned Jail Superintendent for necessary information and compliance.



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29. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA
JUDGE

MARCH 12, 2025/kr

Signature Not Verified

Digitally Signed
By: SHIWANI NEGI
Signing Date: 18.03.2025
19:33:27

CRL.A. 768//2014 and CRL.A. 789/2014