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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 30.10.2023
Pronounced on: 01.12.2023

+ **CRL.A. 1364/2011 & CRL.M.A. 4095/2020**

G.S.RAJU

..... Appellant

Through: Dr. T.R. Naval, Mr. Nibhil
Chugh, Advocates with
appellant in person

versus

CBI

..... Respondent

Through: Mr. Prasanta Varma, SPP with
Ms. Prativa Rani Varma and
Ms. Pragna Verma, Advocates

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present appeal under Section 374 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed by the appellant for setting aside the impugned judgment dated 29.09.2011, and the order on point of sentence dated 10.10.2011 passed by learned Special Judge, P.C. Act (CBI-09), Central District, Tis Hazari Courts, New Delhi ('Trial Court') in CC No. 36/2011, whereby the appellant was convicted for offences punishable under Sections 7 and 13(1)(d)



punishable under Section 13(2) of Prevention of Corruption Act, 1988, (‘P.C. Act’). The appellant was sentenced to undergo:

- i. Rigorous imprisonment for six months along with a fine of Rs.8,000/- for the offence under Section 7 of the P.C. Act,
 - ii. Rigorous imprisonment for one year along with a fine of Rs.72,000/- for the offence under Section 13(1)(d) punishable under Section 13(2) of P.C. Act.
 - iii. In case of failure to pay fine within a period of six weeks, fine to be recovered in accordance with Section 421 of Cr.P.C.
2. The present appeal was admitted and the order on sentence was suspended *vide* order dated 08.11.2011 by this Court.
3. The facts of the case, as per prosecution, are that RC-4(A)/2008/BI/ACB/ND was registered on the basis of a written complaint of Sh. Ramesh Chawla (PW-6), dated 03.01.2008, addressed to S.P. CBI, Anti Corruption Branch, New Delhi, in which it was stated that the complainant was running a business of auto rickshaws in the name and style of M/s Chawla Motors. It was stated on 26.12.2007, the complainant had submitted applications for issuance of No Dues Certificate (NDC) with respect to 5 auto rickshaws with the Appellant herein, who was then working as the Pollution Level Test Inspector (PLTI) with Auto Rickshaw Unit Burari, Transport Department, Govt of NCT of Delhi. It was alleged that on 01.01.2008, the complainant had approached the Appellant herein to make enquires with regards to the aforesaid applications and the Appellant had demanded a bribe of Rs.8,000/- (Rs.1,600/- per



auto) for issuance of No Dues Certificate and had asked the complainant to bring the said amount by 03.01.2008. Thereafter, on 03.01.2008, the present complaint was handed over to Sh. Premnath, Inspector (PW-9) for verification, who had then called Sh. Jagdish Singh (PW-10), Asst. Manager, National Co-operative Consumer Federation (NCCF), Nehru Place as an independent witness. The complainant along with PW-9 and PW-10 had reached the Transport office and the complainant had gone inside to meet the Appellant along with a digital voice recorder. After meeting the Appellant, the complainant had informed Inspector Sh. Premnath that the Appellant had asked him to bring Rs.8,000/- the next day. Recorded conversation was heard in the presence of the witness PW-10 and after confirming the demand, the present case was registered and it was decided to lay trap the next day.

4. Thereafter, the trap team was formed the next day i.e. 04.01.2008 by Sh. Raj Singh (PW-11), Inspector comprising of Rajesh Chahal, H.K. Lal, S.C. Bhalla, Prem Nath (PW-9), all Inspectors and Nikhil Malhotra and Manish Kumar(PW-12), Sub Inspectors. Two independent witnesses were also arranged i.e. Jagdish Singh (PW-10, Shadow Witness) and N.K. Awasthi (PW-7, another Independent Witness), both Assistant Managers with NCCF. The complainant had produced 16 currency notes of Rs. 500/- denomination each, and number of the currency notes were noted down in pre-trap memo. The said currency notes were also treated with phenolphthalein powder. The treated currency notes were kept in the right side pant pocket of the complainant with a specific



direction to the complainant to handover the tainted bribe money to the Appellant only on specific demand. A digital voice recorder was also handed over to the complainant. Sh. Jagdish Singh (PW-10) was asked to act as a shadow witness and remain close to the complainant.

5. The trap team had reached the office of Transport Department, Burari at about 12.15 PM. After reaching the premises, all the members had taken suitable positions and the complainant along with the shadow witness, had gone to the room no. 26 i.e. room of the Appellant, situated on the ground floor. At about 1.10 PM, the complainant had given a missed call on the phone number of Insp. Raj Singh, signaling the transaction of the bribe amount. On this, all the members of the trap team had reached the office room of the Appellant and after disclosing their identity, had challenged the Appellant about having demanded and accepted illegal gratification of Rs. 8,000/-. The left wrist of the Appellant had been held by Insp. Raj Singh and the right wrist had been held by Sh. Rajesh Chahal.

6. As per prosecution, the shadow witness Jagdish Singh (PW-10) was asked to narrate the incident, who had stated that he along with the complainant had entered room no. 26 of the Appellant where the Appellant was sitting on his office chair. On enquiry by the Appellant about the shadow witness, the complainant had informed that the file of the shadow witness with respect to one auto rickshaw was pending and that is why he had also come along. Later, the Appellant had gestured the complainant to send the shadow witness out. On coming out, after 5 minutes, the complainant had also came out and made a



call from his mobile number to Inspector Sh. Raj Singh. Further as per prosecution, the complainant was also asked to narrate the entire incident and on this, he corroborated the incident as narrated by the shadow witness. In addition, he also stated that when the shadow witness left the room, the Appellant demanded the bribe, on which the complainant took out the tainted money and handed over to the Appellant. He also stated that the Appellant accepted the said tainted money with his left hand and opened the right upper drawer of his office table with his right hand and kept the said bribe amount in the said drawer with his left hand.

7. Thereafter, the left hand wash of the Appellant had been taken in a colourless solution of sodium carbonate, which had turned pink and the same had been transferred in a clean glass bottle. The paper wash of the paper on top of which the tainted money had been kept in the drawer had also been taken in a colourless solution of sodium carbonate and the same had turned pink. It had then been stored in a clean glass bottle. The independent witness Sh. N.K. Awasthi (PW-7) had been asked to recover the money from the drawer, after which the numbers of these currency notes had been tallied with the currency notes already noted in the pre-trap proceedings. After the proceedings were concluded, the Appellant was arrested.

8. The appellant was charged for offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of P.C. Act. The appellant pleaded not guilty to these charges and claimed trial.

9. The prosecution had examined the following 12 witnesses:

- i. PW-1 Sh. R.S. Chouhan, Senior Scientific Officer Grade-II



Chemistry, CFSL Delhi

- ii. PW-2 Sh. Dr. Rajinder Singh, Principal Senior Scientific Officer and Head of Physics and Forensic Division, CFSL Delhi
 - iii. PW-3 Sh. Dinesh Verma, LDC, Burari Transport Authority
 - iv. PW-4 Sh. Rajesh Kumar, Motor Licensing Officer, Burari Transport Authority
 - v. PW-5 Sh. Ashok Gupta, Deputy Commissioner, Burari Transport Authority
 - vi. PW-6 Sh. Ramesh Chawla, Complainant
 - vii. PW-7 Sh. N.K. Awasthi, Independent Witness
 - viii. PW-8 Sh. R.K. Verma, Secretary-cum-Commissioner of Transport Department, Sanctioning authority
 - ix. PW-9 Inspector Prem Nath
 - x. PW-10 Sh. Jagdish Singh, Independent Witness/Shadow Witness
 - xi. PW-11 Inspector Raj Singh, Inspector, Trap Laying Officer
 - xii. PW-12 SI Manish Kumar Upadhaya
10. Defence evidence was led by the appellant. Statement of appellant under Section 313 Cr.P.C. was recorded wherein he has refuted all the evidence produced against him by the prosecution. In his defence, the appellant had examined the following witnesses:
- i. DW-1 Sh. T.C. Meena, LDC, CGO Complex, New Delhi
 - ii. DW-2 Sh. Ashok Kumar, Inspector, Burari Transport Authority
 - iii. DW-3 Sh. Arvinde Kumar Sharma, Inspector, Burari Transport Authority
 - iv. DW-4 Sh. Ashok Tyagi, Inspector, Burari Transport Authority



11. By way of impugned judgment dated 29.09.2011, the learned Trial Court after considering the evidence and material available on record held the appellant guilty of offences punishable under Sections 7 and 13(1)(d) punishable under Section 13(2) of P.C. Act. The concluding part of the impugned judgment reads as under:

“16. Conclusion and Conviction

16.1. Thus what we have before us is the evidence that the Accused had demanded money from the complainant; he had received the money from the complainant; and he was found in possession of the tainted currency notes. He also failed to discharge the burden in terms of section 20 of the Prevention of Corruption Act. The prosecution has been able to prove beyond reasonable doubt that the Accused being a public servant demanded and accepted illegal gratification from the Accused of Rs.8000/- , a pecuniary advantage by corrupt and illegal means abusing his position as a public servant. I am accordingly convicting the Accused under Section 7 and Section 13(1) (d), punishable under section 13 (2), of Prevention of Corruption, 1988, as charged...”

12. Aggrieved by his conviction, the appellant had approached this Court seeking setting aside of the impugned orders/judgment.

13. Learned counsel for the appellant has argued that appellant is innocent and the learned Trial Court has committed an error by convicting the appellant since the prosecution had failed to prove its case beyond reasonable doubt. It is argued that shadow witness in the present case had not supported the case of prosecution and the learned Trial Court did not appreciate and apply the law in this regard correctly. It is argued that when the appellant was having his lunch with his colleagues, he was informed that somebody had come to meet him and then he had gone to his room. The attention is drawn to



the testimony of DW-2 to DW-4 which show that the accused was having lunch from (1:00 to 1:30 pm), and at about 1:15 pm, he was called by someone who had told that someone had come to meet him. It is argued that the CBI had failed to proof demand and acceptance of the bribe amount for the purpose of release of five No-Dues Certificates. It is stated that in absence of proof of demand or alleged acceptance of bribe, no case is made out against the appellant.

14. It is argued by learned counsel for the appellant that shadow witness i.e. PW-10 Sh. Jagdish Singh had not supported the prosecution's case. Reliance is also placed on the testimony of shadow witness and it is argued that there is no demand of bribe by the appellant from the complainant in the presence of the shadow witness and no suggestion was given to him in respect of any alleged demand made by appellant in his presence. It is also argued that learned Trial Court has erroneously drawn presumption of Section 20 of P.C. Act against the appellant, despite there being no evidence against the appellant that he had demanded any bribe. It is also stated that there is no alleged demand of bribe of Rs. 8000/-by the appellant in the transcripts of tape recordings. It is also stated that the Original voice recorder and Original cassette was not produced before the Trial Court and the transcripts of conversations were rightly not considered as admissible evidence by the Trial Court. It is further the case of appellant that the complainant has admitted in the cross-examination that he was aware that his four No dues Certificates were ready to be delivered and one is lying under objection due to want of pollution certificate and the same were displayed on the



display board. It is also stated that incase the appellant had intention to demand money, he would not have completed the four certificates and/or raised the objection on one of the applications and put them in public domain. It is stated that circumstantial evidence suggests innocence of the appellant since only Rs.800/- was found in his purse, though there are allegations of accepting Rs.8,000/- as bribe. It is also stated that in office search-cum-seizure memo also, no amount of money was found or recovered by CBI.

15. It is contended on behalf of appellant that the learned Trial Court has overlooked the material contradictions in statements of prosecution witnesses including the discrepancies in the statement of complainant i.e. PW-6 and second independent witness i.e. PW- 7. It is argued that complainant i.e. PW-6 had deposed in this cross-examination dated 24.01.2009 that after 5/7 minutes of giving signals to CBI Officer by giving missed call, they had entered the room of accused and there were about 5/7 persons at that time. On the other hand, PW-7 in his cross-examination dated 28.03.2009 had deposed that the officers had entered the room of the appellant within 2 minutes after receiving the signal. Learned counsel also states that the visitors entry register of ACB Branch of CBI shows that the complainant had gone to CBI office at 11.30 am and had come out at 11.50 a.m. and the witnesses had gone to CBI office at 11.35 am and came out at 11.50 a.m. However, this is contrary to the transcription cum voice identification Memo (Ex. PW-6/D), which shows that they had come to CBI office at 11.30 am and had come out at 1.30 p.m. It is stated that the learned Trial Court failed to take the view favorable



to the accused/appellant as two views were possible regarding recovery of money. It is also stated that the learned Trial Court has committed an error by holding that the appellant was held by his wrist and not by palm by the officers of trap team and therefore, there was no possibility of phenolphthalein powder being transferred to his hand/from the hands of the CBI officials. It is argued that hand wash of the PW-7, who had allegedly recovered the money, was not taken to corroborate the factum of recovery and presence of money in the drawer. It is stated that there is strong possibility that hand wash which was portrayed by the CBI to be hand wash of accused was in fact the hand wash of PW-7 or some other CBI official. It is also argued that hand wash of the appellant is of left hand whereas the money was recovered from right side drawer and it is absolutely unnatural that the money was kept in the right drawer with the left hand but there was no chemical reaction on the right hand nor hand wash of right hand of the appellant was taken. It is also argued that no recovery was affected in the presence of shadow witness i.e. PW-10 as he was present outside at the time of recovery. It is stated that the sanction order is a draft sanction order and is cryptic and does not meet the requirements of law. It is stated that sanction has been granted in a mechanical manner and PW-8 Sh. R.K. Verma was not aware about the ingredients of Section 5, 6, 7 and 13 of P.C. Act. It is also stated that no independent person or official from the Transport Department has been made witness to the alleged recovery as well as to the hand wash proceedings. In these circumstances, learned



counsel for the appellant argues that the present appeal be allowed and the conviction of appellant be set aside.

16. On the other hand, learned counsel for the respondent/CBI argues that there are no contradictions or material inconsistencies in the statements of the witnesses and the learned Trial Court has passed a detailed and well-reasoned judgment. It is submitted that all the contentions raised before this Court have already been dealt with by the learned Trial Court in the impugned judgment. It is also stated that the raid in this case was conducted and the bribe was recovered from the drawer of the room of the present appellant, which stands proved by the oral as well as scientific evidence. It is stated that the proceedings were conducted as per law and the judgment passed by the learned Trial Court does not suffer any infirmity. It is argued that all the material witness have supported the case of the prosecution and despite cross-examination, no inconsistencies could be brought on record and therefore, the appellant has been convicted on the basis of material on record. It is also stated that the entries of the witness are not made for the purpose of maintaining secrecy who visits CBI office at CGO complex as deposed by PW-12 and therefore, it is clear that witness had come to CBI office, however, their names were not in the visitors register to maintain secrecy. It is stated that the appellant has not disclosed the names of his colleagues with whom he was having lunch when according to statement of DW-4 all the inspectors used to take lunch together in his room. It is stated that the testimony of defense witness is not trustworthy and therefore, the consistent statements given by the prosecution witnesses which



proves the factum of demand of bribe, its acceptance and its recovery be accepted and the impugned judgment be upheld.

17. This Court has heard arguments addressed by the learned counsels for both the parties, and has perused the case file, trial court record as well as the written submissions/synopsis filed by both the parties.

18. In the present case, the first argument addressed on behalf of appellant was that the shadow witness in the present case i.e. PW-10 had not supported the case of prosecution and the learned Trial Court had committed an error by not appreciating the importance of a shadow witness in a trap case and the fact that appellant herein deserved benefit of doubt and ought to have been acquitted in the present case.

19. To appreciate this argument, this Court has gone through the testimony of the shadow witness/PW-10 and has also carefully perused the findings recorded by the learned Trial Court in respect of shadow witness turning hostile and not supporting the case of prosecution. In this Court's opinion, there is no dispute on the fact that a shadow witness in a trap case, as the very name suggests, is supposed to act as a shadow of the complainant and has to witness the factum of demand as well as acceptance of bribe by the accused, so as to independently support or not support the case of prosecution. However, at the same time, having perused the reasons recorded by the learned Trial Court, this Court notes that the shadow witness in the present case had admitted his signatures on nine documents prepared by the CBI which were the (i) verification memo prepared



by Inspector Prem Nath, (ii) the handing over memo dated 04.01.2008 making reference to the pre-trap proceedings, (iii) the recovery memo dated 04.08.2008 containing details of all post-trap proceedings, (iv) arrest-cum-personal such memo of accused prepared at the time of arrest, (v) transcript of conversation between complainant and accused of 03.01.2008 which was prepared on 05.05.2008, (vi) transcript of conversation between complainant and accused of 04.01.2008 which was prepared on 05.05.2008, (vii) the site plan, (viii) office search-cum-seizure memo dated 04.01.2008, and (ix) the specimen voice recording memo prepared on 04.01.2008 making reference to recording of specimen voice of the accused.

20. Having specifically admitted his signatures on all these documents, the shadow witness in the present case had entirely resiled from his earlier statements recorded before the CBI and had not supported the case of prosecution before the learned Trial Court in its entirety. It has been taken note of by the learned Trial Court that the manner in which the shadow witness had answered the questions put to him by the learned Prosecutor after being declared hostile pointed out that his testimony was not reliable since he had merely stated words such as “I do not know”, “I do not remember” to each and every question that was put to him by the learned Prosecutor. Thus, it was observed by the learned Trial Court that despite having signed documents and papers, not just on one date but on three occasions i.e. on 03.01.2008, 04.01.2008 and 05.05.2008 and having not denied the factum of putting signatures on these documents, he had refused to support the prosecution case on any of the aspects and



had also not given any justification as to how and why he had signed those documents without even asking as to what was written on those documents by the CBI.

21. In this Court's opinion also, it is not a case where a shadow witness has deferred on some material aspects which can raise suspicion about the case of prosecution, rather the conduct of the shadow witness herein raises suspicion on his own reliability and trustworthiness. Therefore, this Court finds no infirmity with the observations of the learned Trial Court that this witness was untrustworthy and could not be counted for disbelieving the case of prosecution, in the present case.

22. Now, before proceeding further on the merits of the case, it shall be appropriate to take note of the law regarding Section 7, 13 and 20 of PC Act, 1988. In this regard, this Court deems it apposite to refer to the observations of Constitution Bench of Hon'ble Apex Court in case of *Neeraj Dutta v. State (NCT of Delhi)* (2023) 4 SCC 731 wherein it was observed 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 (i) 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 (i), 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 (i) 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 said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(1) 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.

89. In view of the aforesaid discussion and conclusions, we find that there is no conflict in the three-judge Bench decisions of this Court in *B. Jayaraj* and *P. Satyanarayana Murthy* with the three-Judge Bench decision in *M. Narsinga Rao*, with regard to the nature and quality of proof necessary to sustain a conviction for the offences under Sections 7 or 13(1)(d)(i) and (ii) of the Act, when the direct evidence of the complainant or "primary evidence" of the complainant is unavailable owing to his death or any other reason. The position of law when a complainant or prosecution witness turns "hostile" is also discussed and the observations made above would accordingly apply in light of Section 154 of the Evidence Act. In view of the aforesaid discussion, we hold that there is no conflict between the judgments in the aforesaid three cases.

90. Accordingly, the question referred for consideration of this Constitution Bench is answered as under:

“In the absence of evidence of the complainant (direct/primary, oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution.”



23. This Court will now delve into important aspects of the present case which are the motive for demand of bribe, and whether demand, acceptance and recovery of bribe was proved in the present case to establish guilt of the appellant herein.

24. The motive for demanding bribe from the complainant, on the part of appellant, was that the complainant who was running a business of auto rickshaws had submitted applications for issuance of No Dues Certificates (NDC) with respect to 5 auto-rickshaws with the appellant, who was the Pollution Level Test Inspector in the Transport Department, Burari and the appellant herein had demanded a bribe of Rs.8,000/- which is Rs.600/- per auto for issuance of NDC. The motive for demand in the present case stands established by the fact that the applications filed by the complainant were still pending with the appellant when he had demanded bribe. PW-5, who was the Deputy Commissioner of concerned department, had deposed before the Trial Court that the applications for seeking NDCs were to be moved before the Inspector, who in the present case was the appellant. PW-3 who was LDC of concerned department had also deposed that the NDCs were fully prepared however they had not been signed by the appellant herein. The office search-cum-seizure memo proves that the files pertaining to the five vehicles owned by the complainant was seized from the office of appellant during the post-trap proceedings.

25. Though it was contended on behalf of the appellant that since the files and NDC had already been cleared and prepared, there was no occasion for the appellant to do anything further and thus, there



was no motive to demand bribe. However, it is to be taken note of that as deposed by PW-4, who was the Motor Licensing Officer of the concerned department, even after preparation of NDC, the concerned inspector was required to put this signatures on the same only when the applicant would come to collect the certificates. Thus, it was clear from the record that though the NDC had been prepared, the appellant however had not signed the same, and hence, he had an opportunity and motive to ask for bribe of Rs.8,000/- from the complainant.

26. As regards the issue of demand of bribe, complainant PW-6 had deposed in his examination that on 01.01.2008, he had gone to the Burari Authority as he had submitted five files of auto rickshaws for getting NDC and there he had met the present appellant, who had demanded Rs.8,000/- from him and upon refusal of complainant to give such amount, he had again asked the complainant to come to his office on 03.01.2008 along with bribe money of Rs.8,000/-. Thereafter, the complainant had lodged a complaint with the CBI which was assigned to PW-9 Inspector Prem Nath who was posted at CBI, Anti-Corruption Bureau, Delhi. PW-9 had then arranged one independent witness namely Jagdish Singh, who was later the shadow witness in the present case, and PW-9 along with the independent witness and the complainant had gone to Burari Transport Authority on 03.01.2008 for the verification of demand. A digital recorder was also given to the complainant in which the conversation between complainant and the accused had been recorded which, however, was not considered as admissible evidence



by the learned Trial Court for the reasons recorded in the impugned judgment. However, the complainant had deposed that on 03.01.2008, the accused had got angry with the complainant since he had not brought the bribe money and had told him that he should bring the amount the next day i.e. 04.01.2008. On verification of demand, the trap team had been formed and trap had been laid for the next day that is 04.01.2008. Again on 04.01.2008, as deposed by complainant/PW-6, the accused had asked the complainant to send the shadow witness outside the room by way of a gesture and thereafter, he had demanded the bribe of Rs.8,000/-after which the complainant had given him the amount which the accused had accepted.

27. It is true that in this case, the only evidence that proves the demand of bribe directly is the testimony of complainant himself and neither the shadow witness had heard anything on the aspect of demand of bribe and nor was the electronic evidence considered as admissible in the present case. However, it is to be noted that the complainant in the present case had remained steadfast to his statements throughout from the filing of initial complaint to the culmination of trial, and no major contradictions or inconsistencies could come on record even after his cross-examination. As discussed in the preceding paragraphs, it has held by the Hon'ble Apex Court that demand of bribe is *sine qua non* for raising presumption under Section 20 of PC Act, however, this demand can also be proved by circumstantial evidence in case of absence of direct oral or documentary evidence.



28. In this case, though there is oral evidence of the complainant himself which is consistent regarding the demand of bribe, and the verification memo and the testimony of PW-9 proves the fact that complainant had approached the officials of CBI on 03.01.2008 for lodging his complaint against the appellant and the fact that the shadow witness along with PW-9 and complainant had visited the office of accused on 03.01.2008 is also not disputed by the shadow witness since he had deposed that though he had visited the office of appellant on 03.01.2008, he had remained outside the room and could not hear the demand of bribe. Thus, the fact that the shadow witness, complainant and the verification officer had visited the office of accused/appellant is not disputed. Even otherwise, in the present case, the demand of bribe has been proved by circumstantial evidence which is discussed in the succeeding paragraphs of this judgment.

29. In the present case, after the accused had demanded bribe and the complainant had handed over the amount of bribe to the appellant, the complainant had thereafter signaled the officers of trap team who had then arrived at the spot and had apprehended the accused. As deposed by PW-6, the appellant had been apprehended by his wrists by the CBI officers. PW-12 SI Manish Upadhyay had also deposed that the right and left hand wrist of the appellant had been caught hold of by the CBI officials. The independent witness i.e. NK Awasthi had also deposed that the hands of the appellant had been caught by the CBI officers.

30. As regards the argument that the appellant could have been caught by his palm and phenolphthalein powder could have been



transferred and the fact that independent witness had deposed that the appellant was caught by 'hands' and not by 'wrists', this Court notes that the learned Trial Court has already taken note of the said argument and has observed that there was no question put to the independent witness in his cross-examination as to what he meant by the use of expression 'hand' and there was no suggestion given to him that the accused had been caught hold by 'palm' and not by his 'wrists'. The trap laying officer i.e. PW-11 had specifically deposed that after challenging the accused and disclosing his identity, he had caught hold of the left wrist of the accused and other officer i.e. Rajesh Chahal had caught hold of his right hand wrist and thereafter, the wash of left hand of the accused had been taken in fresh solution of sodium carbonate. In his cross-examination also, PW-11 had again stated that he had caught hold of the accused from his wrist and it was wrong to suggest that he and the other officer of CBI had caught hold of the accused by his palm and not by his wrists. Thus, there is no infirmity with the conclusion of the learned Trial Court that the accused had been caught hold by his wrists by the CBI officers as deposed by the prosecution witnesses and there was no possibility of phenolphthalein powder being transferred to his hand from the hands of CBI officials.

31. After the accused being apprehended, hand wash of the left hand of the accused was also taken which stands proved by the testimony of complainant/PW-6, independent witness PW-7, trap laying officer PW-11 and the other officer of trap team i.e. PW-12, who all have consistently stated in their examination-in-chief as well



as cross-examination that the wash of left hand of the accused was taken on the spot after putting his left hand in a freshly prepared sodium carbonate solution. The learned Trial Court had also observed that the accused while putting a suggestion to PW-12 in his cross examination had put a suggestion that the hand wash of accused was taken after rubbing the hand of CBI official with the hand of accused, which goes on to show that the accused does not dispute the factum of his hand wash being taken at the spot.

32. As regards the recovery of tainted GC notes is concerned, it remains undisputed that the said notes were recovered from the drawer of the appellant since the appellant himself in his statement under Section 313 of Cr.P.C. and in his written arguments filed before the Trial Court had not denied that the money was recovered from the drawer of the appellant, but had argued that the recovery was a planted one. In this regard, this Court has taken note of the detailed observations of the learned Trial Court and has gone through the testimonies of the witnesses also. The complainant in his testimony had deposed that after the accused had demanded the bribe of Rs.8,000/-, he had given him the same amount and the accused had kept the bribe amount in a drawer. Thereafter, the complainant had went outside the room and had given a signal to the inspector of CBI and the trap team members had then rushed towards the office of accused. In his cross-examination, the complainant had also denied the suggestion that the sum of Rs.8,000/- was not recovered from the drawer of the accused. He had also deposed that the wash of the paper on which the GC notes had been kept in the drawer had also



been taken. The independent witness PW-7 had also deposed that the currency notes were found lying in the drawer of the table which was opened by him on the asking of CBI officers and he had recovered the GC notes from the drawer and he had deposed that CBI officers had asked him to open the door. He had also stated that he had counted the money with the help of shadow witness. In his cross-examination also, he had specifically stated that there probably were three drawers on the side from where the money was recovered, however, the notes were recovered from the top drawer of the table and he had denied the suggestion that he had not recovered any money from the drawer of the table of accused. PW-11 and PW-12 have also supported the case of prosecution and had deposed that the tainted GC notes were recovered by witness NK Avasthi from the drawer of the accused in their presence and thereafter, the recovered notes had been tallied with the numbers noted in the handing-over memo, by the independent witnesses.

33. Furthermore, the factum of hand wash of the accused is also corroborated from the chemical examination report i.e. Exhibit PW1/A which confirmed that there was phenolphthalein on the hand of the accused. The chemical report also proved the chemical wash of the paper on which the tainted GCC notes were found inside the drawer and these reports were proved by PW-1 who was the Senior Scientific Officer at CFSL.

34. A perusal of record also reveals that when the officers of the trap team had arrived at the spot, the appellant was present in his office itself. The same is clear from the testimony of PW-11 who in



his cross-examination had denied the suggestion that when they had entered in the room of the accused, he was not present there. PW-12 had also denied the suggestion in his cross-examination that when the CBI team had entered in the room of accused, he was not present there and was subsequently called in his room. The other prosecution witnesses including the complainant and the independent witness had consistently deposed that after sending and receiving of signal, the trap team had reached the spot and had apprehended the accused.

35. In light of such evidence on record and the statements of witnesses which were almost consistent throughout and no major contradiction could come on record either within the statements given by a particular witness or among the testimonies of different prosecution witnesses, the learned Trial Court had rightly observed that the defence of the accused that he was having lunch with his colleagues when he was called in his room was not tenable. It is also important to note that no such suggestion was put to any of the prosecution witnesses i.e. PW-6, PW-7, PW-10, PW-11 and a suggestion was for the first time given to the last witness that is PW-12, that the accused was not in his room at the time of alleged apprehension and was subsequently called to his room.

36. Further, as regards the argument of no record of entry of the independent witnesses and complainant on 03.01.2008 and 04.01.2008 in the visitors register of CBI, this Court notes that the said argument has already been dealt with in detail in the impugned judgment whereby the two witnesses had also been recalled and they



had deposed that in order to maintain the secrecy at CGO Complex, such entries were not usually made.

37. Therefore, in light of the evidence brought on record by the prosecution by virtue of which it could be established that the accused had demanded the bribe from complainant, he had accepted the same from the complainant, and was found in possession of the tainted currency notes, and in view of the fact that he had failed to discharge the burden in terms of Section 20 of PC Act by having failed to raised probable defence which could rebut the presumption, the learned Trial Court had committed no error in convicting the appellant herein under Section 7 and Section 13 of PC Act.

38. In view thereof, the present appeal stands dismissed alongwith pending application, if any.

39. Since the present appeal had remained pending before this Court for a period of about 12 years, the appellant is directed to surrender within a period of 02 months from today, before the learned Trial Court to serve the sentence awarded to him by the learned Trial Court vide order on sentence dated 10.10.2011 which is the minimum punishment prescribed under Sections 7 and 13 of PC Act.

40. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

DECEMBER 1, 2023/rk