THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Reserved on : 17.05.2024
Pronounced on: 29.05.2024

1. CRA-S-2315-SB-2018

Subhash Kataria .....Appellant

Versus

Central Bureau of Investigation, Chandigarh .....Respondent

2. CRA-S-2443-SB-2018

Sanjeev Kumar .....Appellant

Versus

Central Bureau of Investigation .....Respondent

3. CRA-S-3087-SB-2018

Subhash Kataria .....Appellant

Versus

Arvind Pandey and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. A.D.S. Sukhija, Advocate
for the appellant in CRA-S-2315-SB-2018 and
CRA-S-3087-SB-2018.

Mr. Randeep S. Rai, Sr. Advocate with
Mr. Gautam Dutt, Advocate and
Mr. Farhad Kohli, Advocate
for the appellant in CRA-S-2443-SB-2018.

Mr. Gagandeep Singh Wasu, Special Public Prosecutor
for the respondent-CBI.

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MANJARI NEHRU KAUL, J.

1. This order shall dispose of all the above Criminal Appeals which arise out of judgment and order dated 20.04.2018 passed by

learned Special Judge, CBI Court, Chandigarh (hereinafter referred to as 'learned Trial Court'), whereby the appellants were convicted and sentenced, in case FIR No.RCCHG2008A0030 dated 07.11.2008 for the offences under Section 120-B of the IPC and Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act') registered at Police Station, CBI, ACB, Chandigarh, as under :

Name of the convict	Offence under Section(s)	Period of sentence(s)	Fine imposed	Period of sentence in default of payment of fine
Subhash Kataria	Section 120-B of the IPC r/w Sections 7, 8, 13(2) r/w 13(1)(d) of the PC Act	RI for 02 years	Rs.5,000/-	RI for 01 month
	Section 8 of the PC Act	RI for 02 years	Rs.20,000/-	RI for 02 months
Sanjeev Kumar	Section 120-B of the IPC r/w Sections 7, 8, 13(2) r/w 13(1)(d) of the PC Act	RI for 02 years	Rs.5,000/-	RI for 01 month
	Section 7 of the	RI for 02 years	Rs.10,000/-	RI for 02 months
	Section 13(2) r/w 13(1)(d) of the PC Act	RI for 02 years	Rs.10,000/-	RI for 02 months

1(b). Appellant Subhash Kataria has also impugned the order dated 20.04.2018 by way of CRA-S-3087-SB-2018 as his prayer to initiate action against the complainant and CBI officials under Section 340 of the Cr.P.C. has been rejected by the learned Trial Court.

1(c). The FIR in question was registered against the appellants and co-accused Ramesh Chand. The appellants were convicted by the learned Trial Court as already detailed hereinabove, however, co-accused Sub Inspector Ramesh Chand was acquitted of the charges framed against him.

Case of the Prosecution

2. Before proceeding further, it would be apposite to give in brief the case as set up by the prosecution.

2(a). The prosecution case was set in motion with a complaint (Ex.PW8/2) dated 07.11.2008 moved by Arvind Kumar Pandey (hereinafter referred to as 'complainant') before the Superintendent of Police (SP), Anti Corruption Bureau, CBI, Chandigarh. The complaint was directed against Sub Inspector Sanjeev Kumar and another Officer, Sub Inspector Ramesh Chand. The SP assigned Inspector R.S. Gunjiyal to register the case and take necessary action.

2(b). As per allegations levelled in the complaint, Sudha Pandey wife of the complainant was holding the General Power of Attorney (GPA) for Booth No.14, located in Bridge Market, Sector 17-C, Chandigarh (hereinafter referred to as 'Booth') (Ex.PW1/1). She was running a ready-made garments business there. Sudha Pandey had employed Dina Nath Mishra on a commission basis to assist with the business. A dispute arose between the complainant and Dina Nath Mishra over the occupation of the Booth. Allegedly Sub Inspector, Sanjeev Kumar, Incharge of Neelam Police Post, Sector 17, Chandigarh, and Sub Inspector Ramesh Chand demanded a bribe of Rs.50,000/- from the complainant to settle the dispute in his favour. Both these officers then asked the complainant to bring Subhash

Kataria to deliver the bribe money on 07.11.2008 at Neelam Police Post, Sector 17, Chandigarh.

2(c). Following the complaint, FIR RCCHG2008A0030 was registered on 07.11.2008 under Sections 120-B of the IPC and Sections 7 of the PC Act against the appellants and co-accused Ramesh Chand. Inspector R.S. Gunjiyal was assigned to investigate the case. He decided to set a trap to apprehend the accused red handed. A raiding team was formed, which included independent witnesses Debyendu Dass and Yogendra Prakash. The raiding team demonstrated how Phenolphthalein powder would react with sodium carbonate solution to identify the treated bribe money. Instructions were also given to the complainant not to touch the treated currency notes unless handing them over to the accused. Yogendra Prakash (shadow witness) was asked to observe and overhear the transaction. He was also instructed to signal the trap team by touching his head with both hands after the bribe was handed over.

2(d). On the day of the trap, the raiding team, along with the complainant and other witnesses proceeded to Neelam Police Post, Sector 17, Chandigarh. The complainant first met Subhash Kataria at a nearby shop and then approached Sub Inspector Sanjeev Kumar at the Police Post. The following events then unfolded :

(a) (inside the police chamber) Sanjeev Kumar : "*Haan bhai, paise laye ho*?",

Subhash Kataria : "*Haan Sir, yeh paise le lo*".

The complainant handed the bribe money to Subhash Kataria who counted it and put it in his pocket;

(b) (outside the chamber) the complainant informed Yogendra Prakash (shadow witness) that the bribe money had been handed over. Yogendra Prakash then gave the pre-arranged signal to the trap team by touching his head with both hands--the trap team led by Inspector Gunjiyal, rushed to the spot. The complainant, pointed out to Sub Inspector Sanjeev Kumar and stated that he was the officer who demanded the bribe and thereafter asked him to hand it over to Subhash Kataria.

2(e). Inspector Gunjiyal identified himself and accosted both the accused. Initially, Subhash Kataria appeared perplexed but later admitted to his involvement, while Sub Inspector Sanjeev Kumar denied the accusations. Subhash Kataria was then physically restrained by the members of the raiding party and taken to another room. Thereafter, the right and left hand washes of Subhash Kataria were taken in the sodium carbonate solution, which turned pink, indicating contact with the Phenolphthalein-treated money. The bribe money was recovered from Subhash Kataria's left trouser pocket, and the serial numbers matched those in the pre-trap memo dated 07.11.2008 (Ex.PW8/3). The inner lining of Kataria's pocket was also washed which turned pink, confirming the presence of Phenolphthalein. The bribe money was sealed in an envelope (Ex.PW8/4) and all evidence including the wash samples were properly documented and sealed.

2(f). Due to interference from an unruly mob, the raiding team re-located to a safer location to complete the paper book. The accused were formally arrested and a rough site plan dated 07.11.2008 (Ex.PW8/7) of the location was prepared and signed by the witnesses.

2(g). On 08.11.2008, the complainant handed over a CD containing a recorded conversation of 05th November, 2008. This conversation involved the complainant, Subhash Kataria, Sub Inspector Sanjeev Kumar and Sub Inspector Ramesh Chand discussing the bribe. The CD along with voice recordings (Ex.PW6/7 and Ex.PW8/11 to PW8/13) was sealed and seized as evidence.

2(h). Further investigation also revealed a history of dispute between the complainant and Dina Nath Mishra regarding the Booth. An agreement (Ex.PW4/5) had been reached on 26.10.2008, with the mediation of Sub Inspector Ramesh Chand. Another compromise (Ex.PW4/8) had been arrived at on 03.11.2008, involving Sub Inspector Sanjeev Kumar and Subhash Kataria, where the keys of the Booth were to remain with Subhash Kataria until the matter was resolved between the complainant and Dina Nath Mishra.

2(i). Voice samples of Sub Inspector Ramesh Chand were taken and sent to the CFSL vide Ex.PW6/7. CFSL Report indicated that the voice in the recorded conversation was likely that of Sub Inspector Ramesh Chand. Similarly, the voice of Sub Inspector Sanjeev Kumar was identified by ASP Madhur Verma, and the CFSL report confirmed that it was probably his voice.

2(j). On the basis of the evidence collected by the investigating agency, all the accused i.e. Sub Inspector Sanjeev Kumar, Sub Inspector Ramesh Chand and Subhash Kataria were sent up to face trial. Accused Sub Inspector Sanjeev Kumar was charged under Sections 7, 13(2) read with Section 13(1)(d) of the PC Act under Section 120-B of the IPC and accused Subhash Kataria was charged under Section 8 of the PC Act.

Submissions of the appellants

3. Learned counsel for appellant-Subhash Kataria (hereinafter referred to as 'appellant No.1') and learned senior counsel for appellant-Sanjeev Kumar (hereinafter referred to as 'appellant No.2') have challenged their convictions on multiple grounds by asserting that the prosecution failed to fulfill the burden of proof required under the PC Act. Following submissions have been made by learned counsel for the appellants:-

Absence of Proof of Demand

3(a). that the prosecution failed to prove the alleged demand for bribe, which is a *sine qua non* for a conviction under the PC Act. The sole evidence of the alleged bribe demand is derived from the testimony of the complainant (PW-8) Arvind Pandey. His statements are inherently self-serving and lack corroboration from independent sources, rendering them unreliable. Without cogent and corroborative evidence, the prosecution's case is, therefore, fundamentally flawed;

Absence of Independent Witness Corroboration & Unreliable Testimony of the Complainant

3(b). that the prosecution's case is further weakened in the absence of any independent corroboration. Notably, the shadow witness, Yogendra Prakash (PW-9), testified that he did not overhear any conversation between the complainant and the accused on the day of the trap. This was a critical and gaping hole qua the alleged bribe demand,significantly undermining the credibility of the case of the prosecution and raising doubts about its truthfulness.

Further, the complainant's narrative of the alleged demand of bribe on November 4, 5, and 6, 2008, though disbelieved by the learned Trial Court while acquitting Sub Inspector Ramesh Chand was inexplicably accepted qua the demand of bribe made on November 7, 2008, against the appellants, based solely on the uncorroborated testimony of the complainant. The specific words allegedly spoken by appellant No.2, "*Haan, paise laye ho?*" was not supported by any independent corroboration;

<u>Inconsistent Acquittal of Co-Accused</u>

3(c). that the Trial Court's decision to acquit co-accused Ramesh Chand due to insufficient evidence against him, while convicting the appellants based on the same evidence was not only erroneous and inconsistent but also unjust. Despite similar allegations and evidence against all the accused i.e. appellants No.1 and 2 and co-accused Sub Inspector Ramesh Chand, the Court found the evidence inadequate to convict Ramesh Chand. Pertinently, Ramesh Chand, in his statement under Section 313 of the Cr.P.C., admitted his presence at the police post on 07.11.2008, directly contradicting the prosecution's claim that he was not there. This inconsistency highlighted the selective and biased approach of the prosecution and lack of appreciation of evidence by the learned Trial Court;

Complainant's Concealment of Material Facts

3(d). that the complainant approached the Central Bureau of Investigation (CBI) while concealing crucial details, such as the compromises executed between him and Dina Nath Mishra qua the shop in question on 26.10.2008, and 03.11.2008, as well as the civil suit filed by Dina Nath Mishra. These facts were integral to understanding the context of the dispute over the Booth and the alleged bribe demand. The omission of these critical details from the complainant's account cast serious doubt on his credibility and the legitimacy of his allegations. After the FIR was registered, the complainant along with his wife and B.K. Rawal filed a civil suit (Ex.PW8/D-3) against the appellants Sanjeev Kumar, Subhash Kataria, Dina Nath Mishra and Gurdev Singh. During his cross-examination in the present case, the complainant admitted to the accuracy of the plaint (Ex.PW8/D-3); further, the contents of the plaint were in total conflict with the testimony of the complainant; according to the plaint (Ex.PW8/D-3) appellant No.1 threatened the complainant to hand over the keys to Dina Nath Mishra, who supposedly offered a higher amount of money. This, however, contradicted the testimony of the complainant that the demand had been raised by appellant No.1, on behalf of appellant No.2 for the first time on 04.11.2008, only after he had visited him after finding Dina Nath Mishra working in the Booth. Additionally, in paragraph 10 of the plaint, the complainant expressed uncertainty about whether appellant No.1 handed over the keys, suggesting that Dina

Nath Mishra might have made duplicate keys. However, this was in conflict with the statement given by the complainant to the CBI that appellant No.1 had given the keys to Dina Nath at the behest of appellant No.2 and Ramesh Chand. Dina Nath Mishra while deposing as PW-32 denied receiving any keys from appellant No.1 and stated that he had kept the keys after a compromise on 03.11.2008. It is, thus, obvious that the learned Trial Court overlooked these material and significant discrepancies which created a serious dent in the case of the prosecution;

Impossibility of Bribe Demand

3(e). that even if, for the sake of arguments, the alleged bribe demand was accepted to be true, the appellants could not have influenced the outcome of the dispute, as it was already sub-judice pending before a civil court. This made the purported bribe demand totally implausible;

Inconsistencies in the Complainant's Testimony

3(f). that the complainant's testimony (PW-8) is plagued with contradictions and material improvements that were not part of his initial complaint (Ex.PW8/2). During his examination-in-chief, he introduced new details that were conspicuously absent from his original complaint, like interactions with the appellants, certain specific instructions, and his various visits to the police post. These glaring discrepancies and additions undermined the credibility of the complainant, and thus deserved to be discarded;

<u>Questionable Recovery of Bribe Money</u>

3(g). that the prosecution totally misconstrued by emphasizing upon the recovery of tainted currency notes from appellant No.1, as the hand wash test had turned pink even though the appellants had pleaded that the complainant had tried to thrust the notes into the pocket of appellant No.1, something which he resisted. Thus, this struggle would have naturally resulted in the transfer of traces of phenolphthalein powder. The prosecution's heavy reliance on this recovery, without taking into account the context and the appellants' explanation, was unjustified and erroneous;

<u>Premeditated and Deliberately Orchestrated Trap Setup and Trap on 07.11.2008</u>

3(h). that evidence on record suggested that the complainant was in contact with the CBI as early as 05.11.2008, which clearly indicated a premeditated plan to set up a trap. PW-9 shadow witness Yogendra Prakash and recovery witnesses had visited the CBI office on 06.11.2008, which corroborated the appellants' claim of a failed trap attempt on that day. This pre-arranged setup cast serious doubts on the legitimacy of the trap laid on 07.11.2008. Still further, the trap on 07.11.2008, was not spontaneous but on the face of it was deliberately orchestrated. Shadow witness PW-9 Yogendra Prakash and PW-14 Debyendu Dass admitted visiting the CBI office on 06.11.2008, to assist in setting up the trap which indicated a preconceived plan rather than a genuine response to a bribe demand. Such an orchestrated trap clearly undermined the fairness of the proceedings and the credibility of the evidence adduced;

Suspect Handling of Voice Recording Evidence

3(i). that the handling of the voice recording evidence by the prosecution too was highly questionable. The method of recording the alleged conversation, the disappearance of the recorder, and discrepancies in the CD's time-line raised significant concerns. The evasiveness on the part of the complainant (PW-8) regarding the recorder and contradictory accounts about the creation of CD etc. severely undermined the prosecution's version. All these issues cast serious doubt on the authenticity and reliability of the audio recordings;

Biased Investigation

3(j). that the investigation conducted by the CBI was patently biased and cryptic as Inspector R.S. Gunjiyal, DSP, CBI/ACB, Chandigarh (PW-31) admitted to not even verifying the ownership of Booth or the compromises effected between Dina Nath Mishra and the complainant. He also failed to consider the pendency of the civil suit between the parties, and the status quo order passed by the Civil Court regarding the Booth. Furthermore, inconsistencies in the testimony of PW-31 Inspector R.S. Gunjiyal, including the discrepancies and attempts to conceal conversations, yet again raised serious doubts about the integrity of the investigation;

3(k). that the prosecution had miserably failed to establish their guilt beyond a shadow of reasonable doubt. Therefore, the order passed by the learned Trial Court convicting them deserved to be set aside.

Submissions of learned Standing Counsel for CBI

4. Learned Standing counsel appearing for the respondent-CBI has made the following submissions:-

Presumption Under Section 20 of the PC Act

4(a). that the recovery of tainted money from the possession of appellant No.1, with appellant No.2 present in the same room, triggers the presumption of guilt under Section 20 of the PC Act. This Section allows for a presumption that the accused accepted the bribe as a motive or reward under Section 7 of the PC Act unless proven otherwise. In the present case, both the appellants miserably failed to convincingly rebut this presumption. The mere presence of tainted money, coupled with the circumstances of the recovery, strongly indicated the culpability of both the appellants in the crime in question;

Recovery of Tainted Money

4(b). that even if the CD containing evidences was not proven according to the provisions of the Evidence Act, 1872, the most crucial fact which still remained intact was that the tainted money had been recovered directly from the possession of appellant No.1. This recovery itself was sufficient to establish demand and acceptance of bribe. The physical evidence of the tainted money being in the possession of appellant No.1 would, therefore, override any other procedural issues with respect to the CDs;

Credibility of Prosecution Witnesses

4(c). that the case of the prosecution was robustly supported by all the witnesses when they stepped into the witness box, particularly, PW-8 complainant. These witnesses corroborated the case of the prosecution on all material facts. The discrepancies highlighted by the learned counsel for the appellants are of minor nature and inconsequential which do not create any dent in the case of the prosecution. Once the complainant was consistent and unwavering in his testimony qua the demand and acceptance of bribe, the case of the prosecution stood solidified. In support, while drawing the attention of this Court to the testimony of the complainant it was asserted that the complainant had stood firm during trial qua the case of the prosecution against both the appellants;

Acquittal of Accused Sub Inspector Ramesh Chand

4(d). that the acquittal of Sub Inspector Ramesh Chand would not impact the case against the present appellants. During investigation, it was revealed that accused Sub Inspector Ramesh Chand had left the location where the alleged bribe transaction had taken place; moreover, the complainant had unequivocally deposed that it was appellant No.2 who had directed him to hand over the bribe money to appellant No.1. Thus, this differentiation was crucial as it clearly underscored that the circumstances and evidence against the appellants were distinct from those involving accused Ramesh Chand. Therefore, the appellants could not claim parity with accused Sub Inspector Ramesh Chand;

Quality of Evidence over Quantity

4(e). that in criminal trials, the quality of evidence holds more weight than the quantity. The fact that Sudha Pandey, wife of the complainant, did not testify, would not undermine the case of the prosecution. The crucial factor in the present case is that both the appellants were caught red handed with the bribe money, which was a compelling and direct piece of evidence against them;

<u>Relevance of Civil Suit and Status Quo Order</u>

4(f). that the argument by the learned counsel for the appellants regarding the absence of any motive due to the pending civil suit (Ex.PW8/D-3) and the status quo order (Ex.PW8/20) does not hold good; the appellants would not have been aware of the civil suit and the status quo order, as these were passed after the demand of bribe had been made. Furthermore, since the civil suit was freshly instituted, it was unlikely that the appellants would have had any knowledge about the stay order passed.

4(g). Be that as it may, in the light of the convincing and cogent evidence including recovery of tainted money, corroborative testimonies of prosecution witnesses and the failure to rebut the presumption under Section 20 of the PC Act, the guilt of the appellants stood proved beyond reasonable doubt. Hence, a prayer was made for dismissal of the appeals.

5. I have heard learned counsel for the parties and perused the relevant material on record.

<u>FINDINGS OF THE COURT</u>

6. Since the appellants have been convicted for offences under Sections 7, 13(1)(d) of the PC Act read with Section 120 B of the IPC, it would be apposite to reproduce the aforesaid Sections:-

*"7. **Offence relating to public servant being bribed**.—Any public servant who,—*

(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person,

shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

Explanation 2.—For the purpose of this section,—

(i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

*7A. **Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence**.—Whoever accepts or obtains or attempts to obtain from another person for himself or for any other* *person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*

XXXX XXXX XXXX

XXXX XXXX XXXX

13. Criminal misconduct by a public servant.-

(1) XXXX XXXX XXXX

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

XXXX XXXX XXXX

<u>Section 120 B of the IPC</u>

120B. Punishment of criminal conspiracy.*—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 1 [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both. "

7. Section 7 of the PC Act imposes a stringent requirement on the prosecution to unambiguously prove beyond any shadow of doubt, demand of bribe by the accused. Without proving this foundational fact,

mere acceptance of money would be insufficient to convict an accused. It is settled principle of criminal jurisprudence that the guilt of an accused cannot rest on presumptions or conjectures but must be firmly rooted in cogent evidence, whether direct or circumstantial. Therefore, in cases under the PC Act, the demand for a bribe must be substantiated through incontrovertible evidence.

8. At the outset, this Court does not find any merit in the submissions made by the Standing Counsel for the CBI that the recovery of bribe/tainted money from appellant No.1 proves both demand and acceptance of illegal gratification, thereby invoking presumption under Section 20 of the PC Act and consequently, the burden falling on the appellants to explain how the bribe/tainted money came into their possession. It is a settled principle of law that merely because tainted money was found in the possession of an accused would not suffice as proof of demand, nor would it trigger presumption under Section 20 of the PC Act. For presumption under Section 20 of the PC Act to arise, the prosecution must, at the first instance, establish the demand and acceptance of bribe beyond reasonable doubt.

9. Hon'ble the Supreme Court in ***State of Punjab Vs. Madan Mohan Lal Verma : 2013(3) RCR (Criminal) 972*** has held that while invoking Section 20 of the PC Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability, and not on the touchstone of proof beyond reasonable doubt. However, before the accused is called upon

to explain how the money in question came to be in his possession, the prosecution must establish the foundational facts.

10. Furthermore, Hon'ble the Supreme Court in ***Neeraj Dutta Vs. State (Govt. of N.C.t. of Delhi) : 2023 SCC OnLine SC 280***, has re-affirmed that to prove that a public servant demanded and accepted illegal gratification, the evidence must unequivocally surpass any reasonable doubt. The relevant excerpt of the said judgment is as follows:-

> *"10. The Constitution Bench was called upon to decide the question which we have quoted earlier. In paragraph 74, the conclusions of the Constitution have been summarised, which read thus:*
>
> *"74. What emerges from the aforesaid discussion is summarised as under:*
>
> *(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.*
>
> *(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.*
>
> *(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.*
>
> *(d) In order to prove the fact in issue, namely, the demand and acceptance of Criminal Appeal No.1669 of 2009 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 Section 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 Section 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 Section 13(1)(d) and (i) and (ii) of the Act.

(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.

(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.

(g) In so far 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 Section 13(1)(d)(i) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point

(e) as the former is a mandatory presumption while the latter is discretionary in nature." (emphasis added) The referred question was answered in paragraph 76 of the aforesaid judgment, which reads thus:

"76. 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." (emphasis added)

11. Even the issue of presumption under Section 20 of the PC Act has been answered by the Constitution Bench by holding that only on proof of the facts in issue, Section 20 mandates the Court to raise a presumption that illegal gratification was for the purpose of motive or reward as mentioned in Section 7 (as it existed prior to the amendment of 2018). In fact, the Constitution Bench has approved two decisions by the benches of three Hon'ble Judges in the cases of B. Jayaraj and P. Satyanarayana Murthy. There is another decision of a three Judges' bench in the case of N. Vijayakumar v. State of Tamil Nadu, which follows the view taken in the cases of B. Jayaraj1 and P. Satyanarayana Murthy. In paragraph 9 of the decision in the case of B. Jayaraj1, this Court has dealt with the presumption under Section 20 of the PC Act. In paragraph 9, this Court held thus:

"9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under

Section 20 can be drawn are wholly absent." 5 2021 (3) SCC 687 (emphasis added) The presumption under Section 20 can be invoked only when the two basic facts required to be proved under Section 7, are proved. The said two basic facts are 'demand' and 'acceptance' of gratification. The presumption under Section 20 is that unless the contrary is proved, the acceptance of gratification shall be presumed to be for a motive or reward, as contemplated by Section 7. It means that once the basic facts of the demand of illegal gratification and acceptance thereof are proved, unless the contrary are proved, the Court will have to presume that the gratification was demanded and accepted as a motive or reward as contemplated by Section 7. However, this presumption is rebuttable. Even on the basis of the preponderance of probability, the accused can rebut the presumption.

12. In the case of N. Vijayakumar5, another bench of three Hon'ble Judges dealt with the issue of presumption under Section 20 and the degree of proof required to establish the offences punishable under Section 7 and clauses (i) and (ii) Section 13(1)(d) read with Section 13(2) of PC Act. In paragraph 26, the bench held thus:

"26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. ***Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court." (emphasis added) Thus, the demand for gratification and its acceptance must be proved beyond a reasonable doubt.***

13. Section 7, as existed prior to 26 th July 2018, was different from the present Section 7. The unamended

Section 7 which is applicable in the present case, specifically refers to "any gratification". The substituted Section 7 does not use the word "gratification", but it uses a wider term "undue advantage". When the allegation is of demand of gratification and acceptance thereof by the accused, it must be as a motive or reward for doing or forbearing to do any official act. The fact that the demand and acceptance of gratification were for motive or reward as provided in Section 7 can be proved by invoking the presumption under Section 20 provided the basic allegations of the demand and acceptance are proved. In this case, we are also concerned with the offence punishable under clauses (i) and (ii) Section 13(1)(d) which is punishable under Section 13(2) of the PC Act. Clause (d) of subsection (1) of Section 13, which existed on the statute book prior to the amendment of 26th July 2018, has been quoted earlier. On a plain reading of clauses (i) and (ii) of Section 13(1)(d), it is apparent that proof of acceptance of illegal gratification will be necessary to prove the offences under clauses (i) and (ii) of Section 13(1)(d). In view of what is laid down by the Constitution Bench, in a given case, the demand and acceptance of illegal gratification by a public servant can be proved by circumstantial evidence in the absence of direct oral or documentary evidence. While answering the referred question, the Constitution Bench has observed that it is permissible to draw an inferential deduction of culpability and/or guilt of the public servant for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The conclusion is that in absence of direct evidence, the demand and/or acceptance can always be proved by other evidence such as circumstantial evidence.

14. The allegation of demand of gratification and acceptance made by a public servant has to be established beyond a reasonable doubt. The decision of the Constitution Bench does not dilute this elementary requirement of proof beyond a reasonable doubt. The Constitution Bench was dealing with the issue of the modes by which the demand can be proved. The Constitution Bench has laid down that the proof need not be only by direct oral or documentary evidence...."

11. In the present case, as per allegations levelled by the complainant, appellant No.1 handed over the keys of the Booth to the complainant. Additionally, appellant No.2 and Sub Inspector Ramesh

Chand demanded Rs.50,000/- as bribe to settle the dispute between the complainant and Dina Nath Mishra regarding the Booth. The first demand of bribe was made on 04.11.2008 and thereafter demands were again made on 05.11.2008 and 06.11.2008. The complainant lodged the complaint with the CBI on 07.11.2008, leading to a trap being set and subsequent arrests of both the appellants.

12. Notably, the shadow witness Yogendra Prakash (PW-9) was asked to overhear the conversation between the complainant and the accused during the alleged bribe transaction, and to signal the trap team by touching his head with both his hands. However, as per the case of the prosecution, shadow witness Yogendra Prakash PW-9, was asked to stay outside the chamber by appellant No.1, and thus, was unable to hear the conversation or even witness the exchange of bribe/tainted money. Therefore, the complainant is the sole witness regarding the demand of bribe and also the transaction which allegedly took place inside the chamber on 07.11.2008.

13. The testimony of the complainant, who testified as PW-8, is crucial to determine whether the appellants and co-accused Ramesh Chand (who was acquitted by the learned Trial Court) demanded a bribe of Rs.50,000/- or not. Therefore, the testimony of the complainant requires a meticulous examination.

14. A careful and minute perusal of the testimony of PW-8 complainant, reveals that on 04.11.2008, after meeting ASP Madhur Verma, PW-33, the complainant went to the Booth and found Dina Nath Mishra working there. He then approached appellant No.1 to enquire as

to how Dina Nath Mishra had access to the keys of the Booth. Appellant No.1 explained that he gave the keys to Dina Nath Mishra at the request of appellant No.2 and co-accused Sub Inspector Ramesh Chand. The complainant stated that appellant No.1 told him that if he paid Rs.50,000/- to appellant No.2 and co-accused Ramesh Chand, the matter could be resolved. Subsequently, the complainant verified the bribe demand with appellant No.2 and co-accused Ramesh Chand, for settling the dispute regarding his Booth with Dina Nath Mishra. Thus, the knowledge of the Booth being opened by Dina Nath Mishra and the initial demand of bribe having been made on 04.11.2008 came to the knowledge of the complainant on 04.11.2008 itself.

15. Following the registration of the FIR, the complainant (plaintiff No.3) along with his wife (plaintiff No.2) and one B.K. Rawal (plaintiff No.1) filed a civil suit against Sanjeev Kumar (defendant No.1), Subhash Kataria (defendant No.2), Dina Nath Mishra (defendant No.3) and Gurdev Singh (defendant No.4). The plaint of the said civil suit was led in defence as Ex.PW8/D-3, wherein the following reliefs were sought:-

> *"Suit for mandatory injunction directing the defendant No.1 and 2 to handover the key of Booth No.14, Bridge Market, Sector 17, Chandigarh.*
>
> *AND*
>
> *Suit for recovery of damages for unauthorise keeping the keys of the said Booth in question in their possession and debarring the plaintiff from using the Booth mentioned above.*
>
> *AND*
>
> *For mandatory injunction to handover the belongings/goods alongwith the possession of the Booth in question to the plaintiff.*

AND

Any other relief to which plaintiff is found entitled on the facts mentioned in the plaint."

16. The complainant, PW-8, was duly confronted with the contents of the aforesaid plaint during his cross-examination in the present case, which were admitted by him to be correct. It would be most pertinent to reproduce the relevant contents of the plaint Ex.PW8/D-3 which are as under:-

> *"7. That the keys of the booth had been handed over to defendant No.1 who handed over to defendant No.2 and has never been returned to the plaintiffs and they have not been ordered to return the keys to defendant No.3 or any other persons.*
>
> *No action was taken by the defendant No.1 a complaint was lodged with SSP, Chandigarh giving the background and **stating that keys are still with the police i.e. defendant No.1 and 2**.*
>
> *8. That after some time, the defendant No.2 approached the plaintiff No.3 and represented that **defendant No.1 is demanding bribe of Rs.50,000/- to hand over the keys to the plaintiff No.3**.The plaintiff was unable to pay the same and hence, did not pay any heed of defendant No.2, after about two/three days defendant No.2 again approached the plaintiff No.3 and demanded Rs.50,000/- to be paid to defendant No.1 for deciding the case regarding booth in favour of the plaintiffs, otherwise, **defendant No.2 threatened the plaintiffs that they will hand over the key to defendant No.3, who is offering higher amount**.*
>
> *9. That apprehending and believing the threats by defendant No.2 the plaintiff No.3 filed a complaint before CBI, Chandigarh against defendant No.1 and 2, fact as stated above and that plaintiff is unable to pay Rs.50,000/- and hence action may be taken against defaulting party.*
>
> *On the basis of the complaint filed by the plaintiff No.3 the CBI, Chandigarh defendant No.1 and 2 were apprehended readily by taking the bribe money of Rs.50,000/- and FIR had been lodged and they have been arrested and are in custody. So the matter is being*

> *investigated by the police regarding the demand of the bribe money.*
>
> *10. That defendant No.1 and 2 being in custody have not returned the key of the booth in question and* ***it seems they have handed over the key to defendant No.3 or defendant No.3 has made a duplicate key of the booth in question and started opening the booth illegally and without any authority.****"*

17. During his cross-examination, the aforementioned paragraphs of the plaint were specifically put to the complainant and he admitted to their accuracy. It needs to be pointed out here that the facts stated in the plaint starkly contradict the testimony of the complainant regarding his knowledge about Dina Nath Mishra opening the Booth on 04.11.2008 and the subsequent demand of Rs.50,000/- by appellant No.1, which was affirmed by appellant No.2 and co-accused Ramesh Chand on the same day. As per the contents of the plaint, appellant No.1 threatened the complainant to hand over the keys to Dina Nath Mishra, who supposedly had offered a higher amount of money which implies that the keys had not been handed over to Dina Nath Mishra on 04.11.2008 when the alleged demand for Rs.50,000/- was made. This blatantly runs contrary to the testimony of the complainant that he had found Dina Nath Mishra working in the Booth on 04.11.2008, and only thereafter had gone to meet appellant No.1. The testimony of the complainant regarding the sequence of events which took place on 04.11.2008, thus, does not come across as trustworthy due to the contradictory statements made in the plaint of the civil suit, which was instituted before the complainant stepped into the witness box in the present case as PW-8. In paragraph 10 of the aforementioned plaint, the

complainant expressed uncertainty about whether appellant No.1 had handed over the keys to Dina Nath Mishra suggesting instead that "it seems" the key was given to Dina Nath Mishra and speculating that Dina Nath Mishra might have made a duplicate key. This again contradicts the statement made by the complainant to the CBI that appellant No.1 gave the keys to Dina Nath Mishra at the behest of appellant No.2 and co-accused Ramesh Chand. Moreover, Dina Nath Mishra, during his testimony as PW-32 denied receiving the keys from appellant No.1. During his cross-examination, PW-32 Dina Nath Mishra categorically stated that he had kept the keys after a compromise had been effected on 03.11.2008. In the above background, the learned Trial Court definitely fell into error in ignoring these material discrepancies.

18. Interestingly and strangely, despite the complainant consistently accusing Sub Inspector Ramesh Chand of demanding bribe alongside appellant No.2, while first making his complaint, then in his statement recorded under Section 161 of the Cr.P.C. (Ex.PW8/D-5) and thereafter during his deposition before the learned Trial Court, Sub Inspector Ramesh Chand was not arraigned as a party in the civil suit filed by the complainant nor was he accused of demanding any bribe. Additionally, the complainant PW-8 made significant improvements in his testimony, by introducing new facts and even contradicting his earlier statement given under Section 161 of the Cr.P.C. i.e. Ex.PW8/D-5. The complainant was duly confronted with the inconsistencies (which appear on page Nos.46 to 49 and 53 of his testimony), however,

he failed to provide any explanation for the same. Furthermore, the voice recording with respect to the demand of the bribe, allegedly made on 05.11.2008, was only handed over to the CBI on 08.11.2008, i.e. a day after the trap. The complainant also evaded question about his call details and tower location near the CBI office on 05.11.2008 and 06.11.2008 (i.e. prior to the day of trap), during his cross-examination.

19. Hon'ble the Supreme Court in its various judicial pronouncements has categorised witnesses into the following three types :

(i) wholly reliable;

(ii) wholly unreliable; and

(iii) neither wholly reliable nor wholly unreliable.

19(a). The Apex Court has held that for the first category, the Courts can easily decide to convict or acquit an accused based on the testimony of even a single witness if it comes across as entirely reliable; for the second category of witnesses, the Courts should not rely on the deposition of a wholly unreliable witness; however, as far as third category of witnesses is concerned, the Courts must ensure corroboration through reliable testimony, either direct or circumstantial.

20. Hon'ble the Supreme Court in ***Madan Mohal Lal Verma's case (supra)*** has emphasized that since a complainant is an interested and partisan witness, who is concerned with the success of the trap, his evidence must be scrutinized like any other interested witness. In some cases, independent corroboration may be necessary before convicting

the accused. In the present case, the testimony of the complainant PW-8 is neither wholly reliable nor wholly unreliable. Rather the entire case of the prosecution is shrouded in mystery, making it extremely difficult to sift the chaff from the grain. Without any other material evidence or witnesses to corroborate the demand of bribe, the appellants could not be convicted, as the bribe demand in the present case remained unproven beyond reasonable doubt.

21. Hon'ble the Supreme Court in ***Neeraj Dutta's case (supra)*** has held and clarified that not every demand for money constitutes a demand for gratification. It must be more than a mere request for money. In this case, even according to the testimony of the complainant, appellant No.2 only asked him "*han bhai paise laye ho*" ("Brother, did you bring the money?"), when he entered inside the chamber. This conversation does not explicitly indicate a demand for illegal gratification for settling the dispute between the complainant and Dina Nath Mishra.

22. Furthermore, a civil suit Ex. PW8/20 had also been filed by PW-32 Dina Nath Mishra against the complainant on 31.10.2008,. In his cross-examination, it has been admitted by the complainant that the pendency of the suit had come to his knowledge on 03.11.2008. On the next day, i.e 04.11.2008, the complainant put an appearance in the said suit through his Counsel wherein the parties were directed by the Civil Court to maintain status quo regarding the property in the question, i.e. the Booth. Admittedly the said suit was in also in the knowledge of the appellants as in the compromise effected on 03.11.2008 in their

presence, between the complainant and PW-32 Dina Nath Mishra, it was mentioned that if the parties were not able to settle the dispute amicably, then the parties would be bound to act as per the order of the Civil Court, which fact was admitted by the complainant in his cross-examination.

23. Interestingly, on the day status quo was ordered by the Civil Court on the same day i.e. 04.11.2008, demand of bribe was raised for the first time by appellant No.1 on behalf of appellant No.2. The complainant also admitted in his testimony that during the period between 26.10.2008, when the dispute first arose, and 03.11.2008, no demand for bribe was raised. It does not appeal to prudence that once the Civil Court was in seisin of the matter and the parties had been directed to maintain status quo, a fact which was well within the knowledge of the complainant, any occasion to demand bribe could have arisen.

24. The case of the prosecution is further riddled with significant discrepancies, such as failing to explain as to why the shadow witness and PW-14 Debyendu Dass were present at the CBI office on 06.11.2008, a day before the trap, when the complaint itself had been given by the complainant on the morning of 07.11.2008. Both admitted this in their cross-examination, and pertinently the tower location of the complainant's phone was also in close vicinity to the CBI office on these dates.

25. It would not be out of place to observe here that the consistent stand of the complainant in his plaint, statement under

Section 161 of the Cr.P.C. (Ex.PW8/D-5) and even during his deposition before the learned Trial Court was that appellant No.2 and accused Ramesh Chand had demanded bribe from him. From 04.11.2008 to 06.11.2008, Ramesh Chand was purportedly with appellant No.2 when the demands for bribe were made. Despite this, accused Ramesh Chand was not arrested during the trap even though he was present at the spot. Evidence of PW-4 Sub Inspector Virender Singh and DW-2 Daljit Singh also confirmed that Ramesh Chand was very much present on the spot, and which fact was admitted by none other than Ramesh Chand in his statement made under Section 313 of the Cr.P.C. The alleged roles of appellant No.2 and accused Ramesh Chand were nearly identical, yet accused Ramesh Chand was not arrested, likely contributing to his acquittal only because he was not caught with bribe money alongside the appellants. It must be noted that the prosecution has also not challenged the acquittal of Sub Inspector Ramesh Chand.

26. Regarding the objection raised by learned senior counsel for appellant No.2 on the validity of the prosecution sanction granted by SSP, U.T., Chandigarh, it is essential to note that granting sanction is a solemn and significant act, providing protection to public servants against frivolous prosecutions. The sanctioning authority must apply its independent mind free from bias or pressure when deciding whether to grant prosecution sanction or not. If this discretion is influenced by extraneous factors and not by independent consideration, the sanction so accorded is invalid.

27. In the present case, the sanction to prosecute appellant No.2 and accused Sub Inspector Ramesh Chand was granted by S.S. Srivastava IPS, DIG, SPG, (Race Course Road), New Delhi, PW-3. He proved the sanction order dated 05.04.2010 and 26.04.2010. During his testimony, as PW-3 he was confronted with office notings related to the sanction, exhibited as Ex.D-1. The relevant portion of the noting admitted by PW-3 reads as under:

> *"SSP*
>
> *I have examined the file and papers and opinion of L/R has also come. The representation of SI Sanjeev Kumar is also there.*
>
> ***The tainted money has not been effected from SI Sanjeev or SI Ramesh. Infact, SI Ramesh Chand was not arrested also**. The copy of CD and conversation also needs to be heard in context for proper interpretation and thus has weak evidence.*
>
> ***However, since a sister agency has sought prosecution sanction, the same be accorded.***
>
> *Put up accordingly."*

28. A plain reading of this noting reveals that the sanction for prosecution was granted merely because a sister agency (CBI) requested it, not based on the merits of the case. Thus, it is a clear case of non-application of mind on the part of the sanctioning authority. Furthermore, PW-3 communicated the sanction order to the CBI, which then requested PW-3 to incorporate specific language in the order i.e. "*after fully and carefully examining the material placed on record under section 161 of Criminal Procedure Code by the Investigating officer and relevant documents in regard to the allegations and having applied mind to the facts and circumstances of the case*". It would also

be most pertinent to point out that on a request of the respondent-CBI, the language was incorporated into the sanction order to give the appearance of a reasoned decision, however, the said request was not acceded to. This Court, therefore, has no hesitation in observing that the sanction was granted without due application of mind, executed in a wholly mechanical manner, and merely at the behest of a "sister agency" and on the face of it, it can be termed, unhesitatingly, as an invalid sanction.

29. Appellant No.1 has been convicted for offence under Section 8 of the PC Act which is reproduced hereinbelow:-

> *"**8. Taking gratification, in order, by corrupt or illegal means, to influence public servant.**-Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."*

30. The essential ingredients to attract the provisions of Section 8 of the PC Act are (i) that the accused accepted or obtained, or agreed to accept, or attempted to obtain, from someone; (ii) for himself or for another person; (iii) any gratification whatsoever; (iv) as a motive or reward **for inducing** by corrupt or illegal means any "public servant

to do or forbear" to do any official act or to show favour, or render any service to any of the persons specified in the Section.

31. Inducement of a public servant by corrupt or illegal means by an accused is a crucial component of an offence under Section 8 of the PC Act. Without any such inducement to do or refrain from doing any official act, or to show favour, or render any service, the accused cannot be convicted under the PC Act.

32. In the present case, the complainant PW-8 in his entire testimony before the learned Trial Court has not stated by way of even a whisper that appellant No.1 demanded bribe of Rs.50,000/- for inducing the public servants i.e. appellant No.2 and accused Ramesh Chand to settle the dispute in his favour. Instead, the complainant only stated that "*Subhash Kataria* ***told*** *me that if I pay Rs.50,000/- to accused Sanjeev Kumar and Ramesh Chand, then the entire matter would be settled*". Later in his testimony, the complainant deposed that appellant No.2 and Ramesh Chand demanded a bribe of Rs.50,000/- "through" appellant No.1. Thus, it is not a case where appellant No.1 directly asked for a bribe as a motive or reward for inducing the public servants to settle the dispute in favour of the complainant. Therefore, appellant No.1 could not have been convicted of the offence under Section 8 of the PC Act. Furthermore, since the prosecution failed to prove the demand for bribe, appellant No.1 is also entitled to be acquitted of the offences charged with.

33. As a sequel to the above, since the prosecution has failed to prove its case beyond reasonable doubt, appeal CRA-S-2315-SB-

2018 and CRA-S-2443-SB-2018 are allowed and the appellants are acquitted of the charges framed against them.

34. The appeal-CRA-S-3087-SB-2018 filed by appellant No.1, against the impugned judgment whereby the learned Trial Court rejected the prayer of the appellant and other accused to initiate action against the complainant and CBI officials under Section 340 of the Cr.P.C. is devoid of any merit. The CD-Q1, Q2 and Q3 were not taken into account by the learned Trial Court while considering the merits of the case as they were all held to be inadmissible in evidence, and further, in the absence of the original recorder, the date of recording of the CDs could not be ascertained. Therefore, this Court finds no merit in the appeal and accordingly, it is hereby dismissed.

29.05.2024 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No