IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

2024:PHHC:023161
CRA-S-2987-SB-2011
Reserved on: February 6th, 2024
Pronounced on: February 20th, 2024

Gurpreet Singh
.....Appellant

Versus

Central Bureau of Investigation
.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Dr. Puneet Kaur Sekhon, Advocate
for the appellant.

Mr. Gagandeep Singh Wasu, Special Public Prosecutor, CBI.

MANJARI NEHRU KAUL, J.

The appellant is impugning the judgment of conviction and order of sentence dated 25.10.2011 passed by learned Special Judge, CBI Court, Chandigarh, vide which he was convicted and sentence in case FIR No.RCCHG2007A0021 dated 17.01.2008 titled as Central Bureau of Investigation Versus Gurpreet Singh, as under:-

Name of convict	Offence	Period of sentence	Fine imposed	Period of sentence in default of payment of fine
Gurpreet Singh	7 of Prevention of Corruption Act, 1988	Rigorous imprisonment for one year	₹5,000/-	R.I. for two months
	13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988	Rigorous imprisonment for two years	₹20,000/-	R.I. for four months

2. CASE OF THE PROSECUTION:

(i). Complainant, Manpreet Singh (hereinafter referred to as 'complainant') was the General Secretary of the Punjab Automobile Mechanics Association, Zirakpur (hereinafter referred to as 'Association'). Some land belonging to the Association was illegally encroached upon by some people. In an attempt to resolve the issue peacefully, a meeting was convened between the complainant and other members of the Association with the alleged encroachers. However, the encroachers retaliated with violence, attacking them with stones etc. resulting in injuries and damage to property. Subsequently, FIR No.60/2007 under Sections 452, 380 and 323 of the IPC was lodged at Police Station Zirakpur, against the alleged encroachers. Appellant-Gurpreet Singh (hereinafter referred to as 'accused') was the investigating officer of the aforementioned FIR i.e. FIR No.60/2007.

(ii) The accused allegedly demanded a bribe of ₹1 lakh from the complainant in exchange for helping the case of the Association in FIR No.60/2007. As per allegations levelled, the accused called the complainant to Tribune Chowk, Chandigarh, on 17.08.2007 at about 7:00 PM, where the aforementioned demand of ₹1 lakh was made, and a threat of adverse consequences was also given, in case the bribe money was not paid. The complainant deferred the decision of paying bribe to the accused on the pretext of consulting the other Association members. On 28.08.2007, the complainant discussed the bribe demand made by the accused with his fellow Association members; a collective decision was then taken to file a complaint against the accused with the CBI.

(iii) Following the decision to file complaint with the CBI, Chandigarh, while en route to the CBI office on 28.08.2007, the accused again contacted the complainant and reiterated his demand of ₹1 lakh by asking him to arrange it by evening, failing which the accused reiterated that it would entail adverse consequences. The complainant was also asked by the accused to duly intimate once the money had been arranged and it would be thereafter that he would specify the place and time, where the bribe money was to be handed over to him.

(iv) Subsequently, the complainant wrote a complaint outside the office of the CBI after talking to the accused, and met the Superintendent of Police, CBI, along with Satpal Singh Sodhi. The Superintendent of Police, CBI directed Inspector Jai Singh to look into the matter, which then led to the registration of FIR No.RCCHG2007A0021 dated 17.01.2008 at 1:00 PM on 28.07.2007.

(v) The Superintendent of Police, CBI, directed the complainant to liaise with Inspector Jai Singh, who then constituted a trap team comprising of the following people, including himself as the Trap Laying Officer (hereinafter referred to as 'TLO'); Inspector M.K. Puri (Inspector CBI), Ravinder Kush (Inspector CBI), Balbir Sharma (Inspector CBI), R.S. Gunjiyal (Inspector CBI), Dinesh Kumar (Sub Inspector CBI), Anupam Chauhan (Sub Inspector CBI), Rakesh Chand independent/shadow witness Hakam Singh (independent/shadow witness), Satpal Singh Sodhi and complainant Manpreet Singh. After the constitution of the trap team, the complainant provided 100 notes of 1000 each, which were treated with phenolphthalein powder by SI CBI Dinesh Kumar. Independent witness Hakam Singh was tasked with the placing the treated notes in the shirt pocket of the complainant after following due protocol. Shadow witness Ramesh Chand was directed to accompany the complainant and hear the conversation between him and the accused as well as witness the demand and acceptance of the bribe money by the accused.

(vi) At 5:06 PM, following the instructions of the TLO, the complainant telephoned the accused, however the latter disconnected the call. Subsequently at 5:11 PM and again at 5:20 PM, the accused contacted the complainant and directed that the bribe money be handed over to him at the residence of Kedar Nath Sethi i.e. House No.3189, Sector 28-D, Chandigarh. In addition, the accused also specifically asked the complainant to get Satpal Singh Sodhi along with him to the residence of Kedar Nath Sethi in the evening. The pre-trap proceedings which commenced at 3:30 PM on 28.08.2007 concluded at around 5:40 PM, with all the members constituting the trap team signing the relevant memos (Exhibits PW 1/1).

(vii) Following pre-trap proceedings, the trap team comprising of all the members proceeded to the residence of Kedar Nath Sethi and arrived there at 5:40 PM. While the complainant accompanied by the shadow witness-Rakesh Chand and Satpal Singh Sodhi entered the house of Kedar Nath Sethi, other members of the trap team positioned themselves nearby. At about 8:00 PM, the accused arrived at the residence of Kedar Nath Sethi and went inside the drawing room of the house, where the complainant along with shadow witness-Rakesh Chand, Kedar Nath Sethi and Satpal Singh Sodhi were already sitting. On demand of bribe, the treated money was handed over to the accused by the complainant and it was accepted by the accused inside the drawing room in the presence of all seated there. Thereafter, when the accused was leaving the house of Kedar Nath Sethi, the shadow witness-Rakesh Chand gave the pre decided signal to the other members of the trap team, who were already positioned outside the house of Kedar Nath Sethi; on receipt of the signal from the shadow witness, the trap team apprehended/caught the accused outside the house with the tainted money at 8:10 PM; thereafter, the accused was taken inside the drawing room of the house of Kedar Nath Sethi.

(viii) Following the successful operation, left hand wash, right hand wash and trouser pocket wash samples were collected from the accused and subjected to sodium carbonate solution, resulting in a colour change to pink indicating contact with the treated currency notes. The samples were then sealed vide Exhibit PW-1/4, the accused upon his arrest was taken to the CBI office and arrest memo Exhibit PW-1/3 was prepared in the said regard; the post trap proceedings concluded at 11:40 PM. The case property including the hand wash and trouser wash samples were then sent to FSL vide Exhibit PW-8/3, which returned with positive findings vide CFSL report Exhibit PW-8/4.

3. Upon completion of the investigation and after obtaining the requisite sanction, a charge sheet under Section 173 Cr.PC was presented against the accused in the Court, followed by framing of charges against him, under Section 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988, (hereinafter referred to as 'P.C. Act') to which he pleaded not guilty and claimed trial.

4. The prosecution in support of its case examined the following 10 witnesses: PW-1 Sh. Rakesh Chand, Assistant Grade-I Depot, FCI, Chandigarh (Shadow Witness), PW-2 Sh. Hakam Singh, Assistant Grade-II(M), FCI, District Office, Chandigarh, (independent witness), PW-3 Inspector Jai Singh, CBI, ACB, Chandigarh (Investigating Officer), PW-4 Sh. Ranbir Singh Khatra, PPS, Punjab Police Headquarters, Chandigarh, PW-5 Manpreet Singh (complainant), PW-6 Sh. Daljit Singh, ASI, SSP Office, Mohali, PW-7 ASI Mohinder Singh, No.983/PTL, PS Zirakpur, PW-8 Sh. Balbir Singh, Inspector, CBI, ACB, Chandigarh, PW-9 SI Rajwinder Singh, SHO, Sardar Jagraon, Ludhiana Rural and PW-10 Amit Kumar, Assistant Nodal Officer. All the prosecution witnesses supported the case of the prosecution.

5. Accordingly, in his defence, the accused examined the following ten witnesses i.e. DW-1 ASI Narinder Singh, DW-2 Jagdeep Kapil, DW-3 HC Surinder Singh, DW-4 HC Mohd. Ilyas, DW-5 HC Rajbir Singh, DW-6 Sukhdev Singh, DW-7 Mhc Jarnail Singh, DW-8 Gurcharan Singh, DW-9 Iqbal Singh and DW-10 MHC Dilbara Singh.

6. Learned Special Judge, CBI, Chandigarh on the basis of the evidence led and other material on record held the accused guilty and convicted him and sentenced as already detailed in the earlier part of this judgment.

7. **CONTENTIONS OF LEARNED COUNSEL FOR THE ACCUSED-APPELLANT:**

Learned counsel for the appellant has contested the impugned judgment by asserting that the demand of bribe was not proved; the case of the prosecution was based solely on the testimony of the complainant, who could not be deemed to be reliable witness, being interested in the success of the case. While highlighting the delay of 10 days in reporting about the alleged bribe demand to the Association until 28.08.2007, learned counsel further argued that it raised a genuine doubt about the authenticity of the alleged demand by the accused, more so when as per the case of the complainant himself, he had confided about the alleged demand of bribe in Satpal Singh Sodhi, who for reasons very strange, was not examined, even though he was cited as a prosecution witness; the other crucial witness in the case in hand i.e. Kedar Nath Sethi (President of the Association), in whose house, the accused had called the complainant and had allegedly handed over the tainted money, even though yet again having been cited as a prosecution witness, was not examined. It was asserted by learned counsel that both these two witnesses were the most crucial witnesses as they were not only present when the alleged bribe money was demanded and accepted by the accused but were also members of the Association.

Furthermore, while emphasizing the absence of any other independent corroboration qua the alleged bribe demand, learned counsel vehemently argued that even shadow witness PW-1 Rakesh Chand, as per his own deposition, admitted during trial that he had not heard the accused demanding the alleged bribe from the complainant on the fateful day while they were all present in the drawing room of Kedar Nath Sethi.

It was further argued by learned counsel that the following factors further undermined the credibility of the complainant:-

(i) Firstly it was a matter of record that the petitioner had previously been involved in a case of cheating under Section 420 of the IPC, which reflected upon his antecedents.

(ii) The significant and questionable delay in reporting the alleged demand of bribe by the accused, coupled with the glaring inconsistencies in the sequence of events further cast a serious doubt upon the accuracy of the allegations levelled by the complainant.

(iii) While drawing the attention of this court to the deposition of the complainant Manpreet Singh, who appeared as PW-5, it was further submitted that as per him, when he was present outside the CBI office, a telephonic call was received on 28.08.2007 at 12:57 PM from the accused, however, the complainant had himself conceded that he had reached the office of the CBI only at 12:55 PM. Furthermore, the complainant deposed that he wrote the complaint with respect to the alleged demand of bribe against the accused while standing outside the office of Superintendent of Police, CBI, as he was even 'carrying a plain paper with him' at the relevant time; thereafter, he handed over the written complaint to Superintendent of Police, CBI, whose office was situated on the 1st floor of the building. However, a perusal of the FIR Exhibit P3/1 was at total variance with the deposition of the complainant and the evidence on record. As per the FIR, it was stated that information had been received at 1:00 PM, thus, the whole timeline spelt out in the case of the prosecution did raise eyebrows and was riddled with gaping holes.

(iv) Learned counsel while arguing further, questioned the feasibility of the complainant and Satpal Singh Sodhi arranging a substantial sum of ₹1 lakh (₹70,000/- by Satpal Singh Sodhi and the remaining ₹30,000/- having been contributed by the complainant himself) within the premises of the CBI office, especially given the fact that there was no material on record much less cogent to show that the complainant after entering the office of the CBI at 12:55 PM on 28.08.2007, had left the premises to arrange the bribe amount in the sum of ₹1 lakh. Hence, given that the issue primarily concerned the Association and not the complainant personally, it was hard to digest and implausible that such a huge amount of money would have been expended by the complainant from his own pocket; it was incredulous that how could the complainant as well as Satpal Singh Sodhi be carrying such a huge amount of money inside the office of the CBI when concededly no money had been drawn by either of them from the account of the complainant or even the Association. It was still further argued by the learned counsel that it was only while stepping into the witness box for the first time during trial that the complainant came up with a new version that Satpal Singh Sodhi was also present outside the CBI office with him and he had joined the trap proceedings, which yet again created a big dent into the case of the prosecution.

(v) Learned counsel furthermore argued that it was a matter of record that the accused had already been transferred out of Police Station Zirakpur to Police Station Mohali, which fact had been kept under wraps for reasons but obvious. In the circumstances and not disputed even by the prosecution, once the accused had relinquished his charge at Police Station, Zirakpur, where FIR No.60/2007 under Sections 452/380/323 of the IPC had been lodged against some encroachers by the Association, there could have been no occasion whatsoever for the accused to demand bribe money from the complainant or for that matter, even for the complainant to succumb to any pressure from the accused to pay him the bribe money. Learned counsel has argued that it was not even the case of the complainant that the accused had been threatening the complainant to falsely implicate him in any case and furthermore, it was a matter of record that the alleged encroachers already stood arrested much prior to the alleged trap proceedings. Hence, all the more reason, it is highly improbable that the accused would have demanded bribe from the complainant.

(vi) Arguing still further with respect to the material inconsistencies and improvements appearing in the case of the prosecution, particularly in the deposition of the complainant, it was vehemently contended that initially in the complaint given to the CBI, the complainant had merely mentioned that the accused had sought ₹1 lakh bribe for helping out in FIR No.60/2007 and in case he was not obliged, he would go ahead and help the opposite party. However, while getting his supplementary statement recorded under Section 161 of the Cr.P.C., the complainant improved upon his initial version given in the FIR and stated that the accused was asking for bribe for help, "which already stood extended to the Association as well as for help in the future." Learned counsel has drawn the attention of this Court to the post trap memo Exhibit PW1/4 and submitted that all these material discrepancies and improvements required to be appreciated from the cuttings which was visible even to a naked eye in the post trap memo Exhibit PW1/4, wherein the words 'the then' were added.

(vii) Learned counsel also drew the attention of this Court to the pre-proceedings memo Exhibit PW1/1, wherein the name of Satpal Singh Sodhi was missing from the first page. Even on the last page of this Exhibit, where his name and signatures appear, the date mentioned below his signatures was not 28.08.2007, which made it clear that blatant manipulation had been carried out by the prosecution. As per PW-3 Jai Singh (TLO), Satpal Singh Sodhi joined proceedings at 5:00 PM on 28.08.2007, however, PW-5 Manpreet Singh and PW-8 Balbir Singh deposed to the contrary that Satpal Singh Sodhi had joined much earlier. It was further argued that the presence of Satpal Singh Sodhi was doubtful at the time of pre-trap proceedings from a perusal of the deposition of PW-3 Jai Singh, who deposed that the complainant had come to him at 1:45 PM and Satpal Singh Sodhi had come later to the office at 5:00 PM. In the circumstances, it was abundantly clear that Satpal Singh Sodhi was not a witness to the pre-trap proceedings and his signatures etc. which were reflected in the pre-trap proceedings had been obtained much later. Hence, in the circumstances, these conflicting testimonies of the witnesses, without doubt, undermined the narrative of the prosecution. Learned counsel further submitted that strangely and unbelievably, both PW-1 Rakesh Chand and PW-2 Hakam Singh, who were employees of FCI, were just verbally directed by their Manager to go to the CBI office for the pre-trap proceedings. In support, learned counsel drew the attention of this Court to the deposition of both these witnesses, wherein they conceded that there were no written orders of either the CBI or even the superior officials of the

FCI asking them to become witnesses in the instant case; strangely the entry of both these witnesses on 28.08.2007 for the purpose of pre-trap proceedings concededly was not even recorded at the Reception of the CBI office. Learned counsel submitted that as if this was not enough, both these independent witnesses while leaving their office on the fateful day for the CBI did not even leave behind anything in writing to show their departure for the CBI office. In support, learned counsel drew the attention of this Court to the deposition of PW-2 Hakam Singh, wherein he had admitted to the said fact.

(viii) Learned counsel has vehemently argued that the *mala fides* on the part of the complainant as well as the blatant connivance of some officials to falsely implicate the accused in the instant case found support from the fact that as per the conceded case of the prosecution, no inquiry was carried out qua the antecedents of the accused from any independent source much less any enquiry with regard to the place of posting of the accused or even any enquiry to find out about the status of FIR No.60/2007. In support, learned counsel drew the attention of this Court to the deposition of both PW-3 Jai Singh and PW-8 Balbir Singh.

(ix) It was also urged that as per the case of the prosecution, the complainant received a telephonic call from the accused while he was inside the CBI office on the fateful day i.e. 28.08.2007, however, strangely despite the CBI having all the relevant equipment/tools, no efforts were made to record the telephonic conversation between the complainant and the accused; had there been any telephonic conversation between the accused and the complainant recorded, it would have gone a long way to prove the alleged demand made by the accused. The factum of the CBI having all the relevant equipment and tools to record the conversation and no attempt made in the said regard was admitted by PW-3 Jai Singh (TLO) during his cross-examination. In support, learned counsel drew the attention of this Court to the deposition of PW-3 Jai Singh and PW-8 Balbir Singh.

(x) Learned counsel while drawing the attention of this Court to the deposition of the shadow witness PW-1 Rakesh Chand further argued that during his deposition, this witness had not even by way of a whisper deposed that he had heard any conversation between the complainant and the accused much less with respect to the specific demand made by the accused for the bribe money. Learned counsel submitted that even otherwise, PW-1 Rakesh Chand did not come across as being a reliable witness as his deposition left no manner of doubt about material improvements made by him on being confronted with his statement recorded under Section 161 of the Cr.P.C.

(xi) Learned counsel further tried to demolish the case of the prosecution by stating that once Satpal Singh Sodhi had arrived at the CBI office only at 5:00 PM, then the question of him contributing ₹70,000/- for the bribe money was nothing but a bundle of lies; even the deposition of PW-3 Hakam Singh that he and PW-1 Rakesh Chand had counted the notes, which were handed over to the accused as bribe money after treating them with phenolphthalein powder could not be believed, more so when PW-1 Rakesh Chand during his testimony had maintained a stoic silence qua this aspect.

(xii) Learned counsel further submitted that as if these glaring discrepancies were not enough, PW-1 Rakesh Chand had stated that the tainted money, which had been placed in his pocket, was tied with a rubber band, whereas PW-2 Hakam Singh stated to the contrary that the money which was placed in the pocket of the shadow witness was loose and not tied with any rubber band. Learned counsel also contended that in the aforementioned facts and circumstances, it was blatantly manifest that the case of the prosecution was not only riddled with inconsistencies but was not supported by any cogent evidence to prove the motive for the alleged demand of bribe.

(xiii) It was lastly contended that it was only Senior Superintendent of Police, Patiala, being the punishing authority, whose sanction was required for proceeding against the accused but instead, sanction was accorded by Senior Superintendent of Police, Mohali, which created a serious dent in the case of the prosecution.

8. **ARGUMENTS BY LEARNED STANDING COUNSEL FOR THE RESPONDENT-CBI:**

(i) Learned counsel for the CBI submitted that it was the quality of evidence, which was to be seen and not the quantity. It was vehemently asserted that no doubt Kedar Nath Sethi and Satpal Singh Sodhi were indeed material witnesses and concededly not examined by the prosecution, however, their non-examination would not, in any manner, help the case of the accused once the complainant had supported the case of the prosecution in its entirety and the shadow witness had also supported the case of the prosecution with regard to the recovery of the tainted money from the pocket of the trousers of the accused.

(ii) Learned counsel for the CBI argued that once the demand of bribe had been corroborated by the complainant including the subsequent acceptance of the same, nothing more was required in the circumstances by the prosecution to prove its case, more so when the accused was apprehended at the spot with the tainted money; his right and left hands were subjected to a hand wash along with his trousers, which on being dipped in sodium carbonate solution, turned pink.

(iii) Learned counsel further submitted that no doubt the accused had been transferred out to Mohali after the registration of FIR No.60/2007 and even his successor had assumed charge at Police Station, Zirakpur, however, being a police official, he still held sway over his colleagues and his successor at the Police Station, Zirakpur. This influence coupled with the attempt of the accused to exploit his position for personal gain strengthened the case of the prosecution with respect to the demand of bribery and he being caught red handed on 28.08.2007 at Kedar Nath Sethi's house.

(iv) Learned counsel for the CBI in particular highlighted the meeting of the accused and the complainant on 17.08.2007 at about 7:00 PM at Tribune Chowk, Chandigarh. He submitted in the evening of 17.08.2007, the accused was found absent at his new place of posting at Mohali, in which regard a DDR was recorded. Hence, a clear inference could be drawn and rather, it stood proved that the complainant had indeed been called by the accused at Tribune Chowk on 17.08.2007 and a demand of bribe had also been made from the complainant.

(v) Qua the non-recording of the telephonic conversation between the complainant and accused, when the latter called the former on 27.08.2007 when he was at the CBI office, it was asserted that no doubt, had the conversation been recorded, it would have surely lent more substance to the case of the prosecution, however, even in the absence of any such recording, it would not undermine the prosecution's case in the background of the recovery of the tainted money from the possession of the accused, which served as tangible evidence of his wrongdoing and the onus was thus, upon the accused to demolish the case of the prosecution and prove to the contrary, which he had miserably failed to do.

(vi) Learned counsel submitted that there was no occasion for the police officials to connive with the complainant and foist a false case upon the accused; the defence which the accused had tried to trump up qua the alleged connivance of some CBI official with the complainant was not supported by any shred of evidence except for his bald assertions; once a definite, cogent and reliable evidence of demand, acceptance and recovery of tainted money was there, it gave rise to a presumption under Section 20 of the P.C. Act.

FINDINGS BY THE COURT:

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

10. At the outset, it would be relevant to deal with the submissions made by learned counsel for the accused that in the present case, the sanction to prosecute was faulty as it was not obtained from the competent authority i.e. Senior Superintendent of Police, Patiala, who was the punishing authority of the accused. This Court concurs with the said submissions in view of clarification Exhibit DW-3/2 issued by the office of Director General of Police, Punjab, to the effect that the competent punishing authority of police officials temporarily attached at District S.A.S. Nagar (Mohali) would be their parent units from where they were drawing their salaries. It is a matter of record and was not disputed by the learned standing counsel for the CBI that the accused was drawing his salary from his parent unit at Patiala, therefore, the competent punishing authority of the accused would be Senior Superintendent of Police, Patiala; Senior Superintendent of Police, Mohali, was thus not the competent

authority to accord sanction for prosecution of the accused. Be that as it may, learned counsel for the accused has failed to demonstrate as to how failure of justice had occasioned to the accused merely because sanction was given by Senior Superintendent of Police, Mohali.

11. Moving further, since the accused has been convicted for commission of offences under Sections 7 and 13(1)(d) of the P.C. Act, it would be apposite to reproduce the aforesaid sections:-

> ***"Section 7 Public servant taking gratification other than legal remuneration in respect of an official act***.— *Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting 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 which shall be not less than six months but which may extend to five years and shall also be liable to fine.*
>
> *(Explanations) - (a) "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.*

> *(b) "Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.*
>
> *(c) "Legal remuneration". The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.*
>
> *(d) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression*
>
> *(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section."*
>
> ***13. Criminal misconduct by a public servant**.— (1) A public servant is said to commit the offence of criminal misconduct,—*
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> *(a) xxxx xxxx xxxx*
>
> *(b) xxxx xxxx xxxx*
>
> *(c) 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;"*

Section 7 of the P.C. Act imposes a stringent requirement on the prosecution to unequivocally prove, beyond any shadow of doubt, demand of bribe by the accused. In the absence of proof of the foundational fact of demand of bribe, mere acceptance of money would not be sufficient to convict the accused. It is a settled principle of criminal jurisprudence that the guilt of an accused cannot be predicated on presumptions or conjectures; rather, it must be firmly rooted in cogent evidence, whether direct or circumstantial. Thus, in cases under the P.C. Act, the demand for bribe must be substantiated through irrefutable evidence.

12. Hon'ble the Supreme Court in *Neeraj Dutta v. State (Govt. of NCT of Delhi) (2022) SCC Online SC 1724* has affirmed that to substantiate the allegations of a public servant demanding and accepting illegal gratification, the evidence must unequivocally surpass any reasonable doubt. The relevant extract of the said judgment is reproduced as under:-

> *"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."*

13. Adverting to the instant case and upon a thorough examination of the submissions made by the both the counsel for the accused as well as the CBI, it is evident that the case of the prosecution is riddled with significant and material discrepancies and lacunae, casting a serious doubt with respect to the guilt of the accused. The accused, thus, deserves the benefit of doubt for the following reasons:-

(i) The accused made a demand for bribe for the first time on 17.08.2007, however, very strangely, the complainant chose to stay quiet, without sharing it with anyone else, for as long as 10 days, much less with other members of the Association, even though the said demand for bribe was made qua a matter pertaining to the Association. It was only on 28.08.2017 (the day when the FIR was lodged) that the complainant chose to apprise the members of the Association in a meeting about the alleged demand, after which it was decided to move a complaint to the CBI. It is also a matter of record that the accused already stood transferred out of Police Station, Zirakpur on 10th of August 2007. Further, as per the deposition of the complainant PW-5 Manpreet Singh, he stated that from 17th of August till 28th of August, he only confided in Satpal Singh Sodhi and apart from him, only Satpal Singh Sodhi knew about the demand of bribe made by the accused. However, Satpal Singh Sodhi, who could have corroborated the version of the complainant about the demand of bribe, was not even examined before the trial court, for reasons, best known to the prosecution, even though he had been cited as a prosecution witness. Similarly the President of the Association, Kedar Nath Sethi, in whose house, the trap was laid, was also not examined by the prosecution, though cited as a prosecution witness. Kedar Nath Sethi in whose house the trap was laid, and who was stated to be present when the bribe money was handed over in the drawing room to the accused could thus have been the other star witness to substantiate the demand of bribe not only by the accused but also qua the disclosure of demand of bribe in the meeting of the

Association held on 28.08.2007.

(ii) It is also a matter of record and as also not controverted rather candidly admitted by the learned counsel for the CBI that despite the availability of call recording apparatus , the phone call conversation between the complainant and the accused on 28th of August 2007, where in again demand of bribe was made by the accused, and that too when the complainant was present inside the office of the CBI, coupled with the fact that the CBI had already been informed about the demand of bribe by the complainant, the telephonic conversation was not even recorded, nor was the conversation heard by any person much less by the members of the trap team, as the phone of the complainant was not even put on "speaker". Hon'ble the Supreme Court while dealing with a similar question in *Neeraj Datta's case (supra)*, held that while dealing with an issue of proof of demand within the meaning of Section 7 of the P.C. Act, it cannot be a simpliciter demand for money, but it has to be a demand of gratification other than legal remuneration. Hon'ble the Supreme Court in *Soundarajan Versus State 2023 LiveLaw (SC) 314* held that to attract Section 7 of the P.C. Act, the demand of gratification has to be proved by the prosecution beyond reasonable doubt. It was further observed by Hon'ble the Supreme Court that there has to be a demand of gratification. It is not a simple demand of money, but has to be a demand of gratification.

(iii) In the instant case as per the deposition of shadow witness, PW-1 Rakesh Chand, the accused in his presence, asked the complainant as to whether he could arrange the money or not, therefore, even in his presence, evidently there was no specific demand of money made for helping out in FIR No.60/2007. Furthermore, no discussion took place between the accused, and the complainant, in the presence of the shadow witness, on the basis of which he could have presumed that the accused was specifically asking for illegal gratification for helping the complainant in FIR No.60/2007. It would also not be out of place to point out here that during the deposition of PW-1 Rakesh Chand, the trial court specifically asked the public prosecutor not to prompt the witness to give a particular answer.

(iv) Merely because the accused was found in possession of the currency notes would not dispense with the proof of demand and even the presumption under section 20 of the PC act would not be attracted in the circumstances. The Supreme Court in *State of Punjab Versus Madan Mohan Lal Verma (2013) 14 SCC 153*, held that while invoking the provisions of Section 20 of the P.C. 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 amount in question was found in his possession, the foundational facts must be established by the prosecution. Hon'ble the Supreme Court further observed that a complainant is an interested and partisan witness, concerned with the success of the trap, and thus his evidence must be tested in the same manner as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person. Therefore, in the absence of any other witness or evidence to corroborate and substantiate the version of the complainant regarding demand of bribe by the accused, it cannot be said that the demand in the present case was proved beyond reasonable doubt, and even presumption under Section 20 of the P.C. Act would not be attracted.

(v) Coming next to the pre-trap proceedings conducted by the CBI, a perusal of the pre-trap memo (Exhibit PW1/1) reveals that it bears the signatures of Satpal Singh Sodhi, though no date is mentioned therein. As per the deposition of PW3, Jai Singh (TLO), it was stated that Satpal Singh Sodhi joined the pre-trap proceedings at 5:00 PM, that is after the complainant was asked by the accused to bring him along to the house of Kedar Nath Sethi. However, at the same time the complainant PW5 Manpreet Singh and PW-8 Inspector Balbir Singh, who was the Investigating Officer of the case, in their respective depositions deposed that Satpal Singh Sodhi had been part of the proceedings from a much earlier stage; the pre-trap proceedings form the foundation of a trap case, and they should be free from any shadow of doubt, however, in the present case the inconsistent versions given by the aforesaid witnesses qua the presence and participation of Satpal Singh Sodhi in the pre-trap proceedings, put the pre-trap proceedings including the pre-trap memo under a scanner. These contradictions cannot by any stretch of imagination, be said to be minor in nature, as was asserted by the learned counsel for the CBI. Further, from the entire examination of the prosecution evidence, it is not even forthcoming as to how a huge amount of ₹1,00,000/- was arranged by the complainant and Satpal Singh Sodhi, after it was decided that a trap would be laid to nab the accused red handed.

(vi) It is a matter of record that on the date when the FIR was registered, the accused had not only been transferred to Police Station, Mohali and assumed charge at his new place of posting, but he had also handed over the case file of FIR No.60/2007 to MHC Mohan Singh on 13.08.2007, therefore, he was in no position or had no occasion to help the complainant in the said case much less arm twist him into paying bribe to him, more so when concededly the encroachers had already vacated the property of the Association. The submissions made by learned counsel for the CBI that even though the accused was transferred out, however, he still held sway over his colleagues and his successor at Police Station, Zirakpur stands negated from the deposition of PW-7 ASI Mohinder Singh, who specifically deposed that the accused, after his transfer, neither interfered with the investigation nor ever visited Police Station at Zirakpur. The prosecution took a stand that the complainant as well as the CBI were unaware about the transfer of the accused, when the FIR in question was registered. However, this fact is hard to believe and is indigestible as Inspector Jai Singh (TLO), in his deposition, categorically stated that he had made enquiries about the accused from "his sources" before the pre-trap proceedings. When this is seen in the light of the fact that words "the then" were struck off from the pre-trap memo (Exhibit PW1/1) it becomes amply clear that the complainant as well as the CBI were well aware about the transfer of the accused to Mohali at the time of the pre-trap proceedings; even otherwise it cannot be believed that such a basic fact would not have come up when the enquiries were made by PW-3 Inspector Jai Singh about the accused.

(vii) Learned counsel for the CBI has also not been able to give any satisfactory explanation whatsoever as to why no written order to conduct investigation in the present case was given by S.P., CBI, on receipt of the written complaint of the complainant, even though the same is required as has also been admitted by PW-8 Inspector Balbir Sharma, during his deposition. Further, admittedly, there was no written request or order from the S.P., CBI to lay a trap; there were no entries in the register maintained at the reception of the CBI office qua the independent witnesses on the fateful day, when they were called to join as members of the trap team; even though as per the deposition of PW-8 Balbir Sharma, such entries were required to be made in the register maintained at the Reception of the CBI office.

14. Adhering to the principle "beyond reasonable doubt" the case of the prosecution falls short of meeting the stringent burden of proof

required in a criminal case. It has crumbled under the weight of various glaring inconsistencies, contradictory testimonies and absence of compelling cogent evidence directly linking the accused to the alleged demand and acceptance of bribe, as reward or motive to do/not to do any official act.

15. As a sequel to the above, the accused deserves the benefit of doubt and is acquitted of all the charges framed against him. The instant appeal is allowed accordingly.

February 20th, 2024 **(MANJARI NEHRU KAUL)**
Puneet **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes