



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

% **Reserved on : 16.02.2024**
Pronounced on : 15.05.2024

+ **CRL.A. 779/2002**

CRL.A. 796/2002 and CRL.M.A. 13709/2022

RAM DUTT TYAGI

..... Appellant

Through: Mr.Maninder Singh, Sr. Advocate with
Ms.Smriti Asmita, Ms. Ekta and Ms.Simran,
Advocates

versus

STATE THR. C.B.I.

..... Respondent

Through: Mr.Rajesh Kumar, SPP for CBI with
Ms.Mishika Pandita, Advocate

AND

SUBHASH CHAND

..... Appellant

Through: Mr.S.K. Sharma, Advocate
versus

C.B.I.

..... Respondent

Through: Mr.Rajesh Kumar, SPP for CBI with
Ms.Mishika Pandita, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeals have been instituted assailing the judgment of conviction dated 30.09.2002 whereby the appellants have been convicted for the offence punishable under Section 120B IPC and Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ('PC Act') and the order on sentence dated 01.10.2002 whereby they were directed to undergo rigorous imprisonment for four years alongwith fine of Rs.500/- each under Section 120B IPC and Sections 7 and 13(1)(d) read with Section 13(2) PC Act each. The substantive sentences were directed to



run concurrently. Further, in case of default of payment of fine, the appellants were directed to undergo rigorous imprisonment for 3 months on each count in the case arising out of FIR No.RC-45(A)/94-DLI registered under Sections 120B IPC and Sections 7 & 13(1)(d) read with Section 13(2) of the PC Act.

2. As both the appeals arise out of a common judgment, the same are taken up for consideration together and disposed of vide this common judgment.

3. The facts in a nutshell, as discernible from the record, are that one *Ram Rattan Sharma*, claiming himself to be the brother of the proprietor of '*Sharma Taxi Stand*' located in Jorbagh, Delhi, filed a complaint (Ex. PW1/A). In the said complaint, he alleged that one *Ranjeet Singh*, who was employed with him as a taxi driver, was arrested and taken to Lodhi Colony Police Station on the intervening night of 13/14.07.1994 by Sub-Inspector *Subhash Chand* (the appellant herein). When the complainant requested *Subhash Chand* to release *Ranjeet Singh*, he demanded bribe of Rs.2,000/- failing which, he threatened the complainant of false implication in an opium case. It was further alleged that the said demand and threats were reiterated in the afternoon of 15.07.1994, when *Subhash Chand* visited the taxi stand.

On receipt of the aforesaid complaint, the concerned SP, CBI directed Inspector *AGL Kaul* to register a case and lay a trap. The subject FIR (Exhibit PW8/A) came to be registered on 15.07.1994 at 5:10 P.M. After completing the formalities relating to the trap proceedings, a raiding team alongwith two independent eyewitnesses namely *Varinder Singh Dagar* (PW3) and *Jagdish Lal* (PW4), both employees of *Food Corporation of India*, reached the taxi stand. At that time, a telephonic call was allegedly



received by the complainant from *Subhash Chand* whereby he stated that he was instead sending *Constable Ram Dutt Tyagi* for collecting the amount. After some time, *Ram Dutt Tyagi* came to the spot on a scooter being driven by Sub-Inspector *Sanjeev Kumar*. *Ram Dutt Tyagi* demanded the bribe, and took the bribe money in his right hand and kept the said amount in the pocket of his shirt. Thereafter, while *Ram Dutt Tyagi* was in the process of going away from the spot, the trap team apprehended him and the money was recovered by the Trap Laying Officer through *Jagdish Lal*. The other proceedings related to the trap were completed. Subsequently, a chargesheet came to be filed against the present appellants as well as against Sub-Inspector *Sanjeev Kumar*. The trial court, finding no material against Sub-Inspector *Sanjeev Kumar*, discharged him. Against the charges framed against them, the appellants pleaded not guilty and claimed trial.

4. The prosecution examined a total of 8 witnesses in support of its case. After hearing both the sides, the Trial Court passed the impugned judgement of conviction and order on sentence.

5. Mr. Sharma, learned counsel appearing for *Subhash Chand*, contended that testimony of the complainant-*Ram Rattan Sharma* is unreliable inasmuch as the same is full of contradictions and improvements on the aspect of demand.

While in his complaint, a demand of Rs.2,000/- was alleged to have been made by *Subhash Chand*, in his testimony recorded in court on 13.10.1997, the complainant deposed that initially a demand of Rs.5000/- was made, which was then reduced to Rs.3000/-. It was further stated that a sum of Rs.1000/- was paid in cash on the intervening night of 13-14.07.1994 and the remaining Rs.2000/- was promised to be paid on the next day. This fact was stated for the first time by the complainant in his deposition.



Further, in his testimony, the complainant also introduced completely new facts which casts serious doubts on the veracity of his deposition and aspect of demand.

6. It was next contended that there are material contradictions in the evidence of the prosecution witnesses on the acceptance and recovery of the bribe amount. While the complainant stated that *Ram Dutt Tyagi* accepted the bribe amount in his right hand and kept it in the pocket of his pant but, in the recovery memo (Ex. PW1/D), it is recorded that the bribe amount was accepted after counting it with both hands, whereafter it was kept in the front pocket of his shirt. The shadow witness also denied the suggestion that *Ram Dutt Tyagi* counted the notes before putting them in his pocket.

It was also contended that both the recovery witnesses i.e., *Varinder Singh Dagar* (PW3) and *Jagdish Lal* (PW4) did not support the case of prosecution and were declared hostile.

7. It was further contended that the prosecution case is falsified by DD No. 25A (Ex. DW2/A) and conviction slip (Ex. PW5/B) which was recorded on 14.07.1994 at 3:25 A.M. The said DD entry was also proved by DW2. As per the said DD, *Subhash Chand* had arrested *Ranjeet Singh* and *Rajender Kumar* under Section 93/97 DP Act for breach of peace on 14.07.1994. They were released on personal bond with direction to appear before the Court on the date of hearing.

8. It was next contended that the prosecution neither examined *Ranjeet Singh* nor *Rajender Kumar*, the two persons who were arrested by *Subhash Chand* and in respect of whose release, the alleged demand was made. Further, even the cleaner *Nanak Chand*, who was stated to be present in the police station on the intervening night of 13/14.07.1994 was not examined.

9. Lastly, it was contended that *Subhash Chand* was falsely implicated at



the behest of one *SK Peshin*, DSP, CBI as the latter had faced enquiry for suicide of an accused in a CBI case, who was kept in the lock up at P.S. Lodhi Colony. In the said enquiry, *Subhash Chand* had represented Delhi Police and hot words had been exchanged between them.

10. Learned Senior Counsel for *Ram Dutt Tyagi* also adopted the contentions made by learned counsel appearing on behalf of *Subhash Chand*. It was contended that besides the contradictions already pointed out, there were also material contradictions in the entire prosecution case relating to the timing of the various proceedings conducted, the position of witness at the time of trap, the arrival of the appellant, his position while receiving money, his apprehension and the procedure of handwash conducted.

11. In support of his contentions, learned counsels for the appellants have relied upon the decisions in Parmanand v. CBI¹, T.C. Chawla v. CBI², Banarsi Dass v. State of Haryana³, C.M. Girish Babu v. CBI, Cochin, High Court of Kerala⁴, Suraj Mal v. State (Delhi Administration)⁵, Rakesh Kapoor v. State of H.P.⁶, M.K. Harshan v. State of Kerala⁷ and V. Venkata Subbarao v. State represented by Inspector of Police, A.P.⁸

12. *Per Contra*, learned SPP for the CBI defended the impugned judgment. It was submitted that the prosecution had successfully established its case against the appellants. He contended that the appellants had failed to rebut the presumption raised under Section 20 of the PC Act. Further, on the conduct of the appellants, it was contended that while *Subhash Chand* had

¹ 2013 SCC OnLine Del 2394

² 2014 SCC OnLine Del 3430

³ (2010) 4 SCC 3430

⁴ (2009) 3 SCC 779

⁵ (1979) 4 SCC 725

⁶ (2012) 13 SCC 552

⁷ (1996) 11 SCC 720

⁸ (2006) 13 SCC 305



initially absconded, *Ram Dutt Tyagi* had threatened the complainant, which factum also finds mention in the proceedings dated 13.10.1997. In support of his contentions, he has relied upon the Supreme Court decisions in State of U.P. v. Zakaullah⁹, B. Noha v. State of Kerala & Anr.¹⁰, Subramanian Swamy v. Manmohan Singh & Anr.¹¹ and State of Uttar Pradesh v. Krishna Master & Ors.¹²

13. I have heard learned counsels for the appellants as well as learned SPP for CBI and have also gone through the trial court records.

14. In the trial, the complainant-*Ram Rattan Sharma* was examined as PW1 and his deposition was recorded on multiple dates. His examination-in-chief firstly took place on 03.06.1997. On that day, he deposed that he was looking after the work of taxi service on behalf of his brother *Madan Lal*, who was the proprietor of *Sharma Taxi Service* located at Khanna Market, Lodhi Colony, New Delhi. He deposed that on the intervening night of 13/14.07.1994, their driver *Ranjit Singh* was apprehended by the police officials of P.S. Lodhi Colony. When he reached Police Station at 3.00 or 4.00 A.M., he met *Subhash Chand*, who demanded a sum of Rs.2,000/- for releasing *Ranjit Singh*. At that time, *Nanak Chand*, the cleaner was also present in the police station. The examination was deferred at the request of prosecutor. In his further examination-in-chief that took place on 13.10.1997, the complainant stated altogether new facts. He deposed that *Subhash Chand* had initially demanded Rs.5,000/- from him and when he protested, the demand was reduced to Rs.3,000/-. He stated that he paid a sum of Rs.1,000/- on the said night and promised to pay the remaining

⁹ (1998) 1 SCC 557

¹⁰ (2006) 12 SCC 277

¹¹ (2012) 3 SCC 64

¹² (2010) 12 SCC 324



amount of Rs.2,000/- on the next day. He further deposed altogether new facts, which were neither stated in his complaint nor in his statement recorded under Section 161 Cr.P.C. to the effect that on the next day, i.e., on 14.07.1994, *Ram Dutt Tyagi* had visited his taxi stand at about 3.00 P.M. and threatened that if the complainant did not pay the balance Rs.2,000/-, he would be arrested in a false case of possession of opium.

Notably, on this day of recording of deposition of the complainant, the trial court noted in its proceedings that the complainant had complained of having been threatened by *Ram Dutt Tyagi*, who had allegedly visited his taxi stand a day prior. In fact, the trial court proceeded to cancel the bail of *Ram Dutt Tyagi* and sent him to judicial custody. The complainant's further examination was deferred for the next day.

15. On the next day i.e., on 14.10.1997, complainant's further examination-in-chief was recorded. Surprisingly, even on that day, the complainant introduced more new facts which were not stated by him in his complaint. He deposed that after the trap team had taken its position at the taxi stand, a phone call was received from *Subhash Chand* at about 5.30-5.40 P.M. In the said call, *Subhash Chand* had enquired if the money was ready and when the complainant answered in affirmative, *Subhash Chand* stated that he was sending *Ram Dutt Tyagi* to receive the same. When the complainant asked if he was the same *Ram Dutt Tyagi* who was with him in the Police Station, *Subhash Chand* replied in the affirmative. As per the prosecution case, at this time, the shadow witness *Varinder Singh Dagar* was sitting with the complainant on a *takhat*. The complainant further deposed that *Ram Dutt Tyagi* came on a scooter which was being driven by *SI Sanjeev Kumar*. *Ram Dutt Tyagi* said '*paise do, jaldi hain*'. On this, he gave Rs.2,000/- to *Ram Dutt Tyagi*, who accepted it with his right hand and



kept it in the right-side pocket of his pant, from where it was recovered by the CBI officer. This fact was contrary to the prosecution case, as per which, the money was first counted and then kept in the pocket of shirt from where it was recovered by the independent recovery witness i.e., *Jagdish Lal*.

Pertinently, on this day, *Ram Dutt Tyagi* was in judicial custody and there was no complaint of any threat to the witness. The complainant was cross-examined by learned prosecutor, when he initially stated that he did not remember but later, accepted the suggestion that the tainted money was recovered from the shirt pocket of *Ram Dutt Tyagi*.

16. The complainant was cross-examined on behalf of *Subhash Chand*. A suggestion was given to the complainant that he did not visit P.S. Lodhi Colony on the said night as the driver *Ranjeet Singh* was already released on bail at Taxi Stand before 3.25 A.M, which was however, denied. The complainant further stated that he had told CBI that on the intervening night of 13/14.07.1994, initially a demand of Rs.5,000/- was made. He was confronted with his statement mark 'A' where it was not so recorded. He also stated that he had only mentioned about the demand of Rs.2,000/- because he had already paid Rs.1,000/- in cash to *Subhash Chand*. He admitted that the said fact was not stated in his statement recorded under Section 161 Cr.P.C.

In the cross examination done on behalf of *Ram Dutt Tyagi*, the complainant admitted that driver *Ranjeet Singh* was released on the same night after he had paid Rs.1,000/-. The complainant stated that *Ram Dutt Tyagi* had visited his taxi stand and threatened him to pay the bribe amount, failing which he would be implicated in a false case of possession of Charas. He was confronted with his statement mark 'A' where it was not so recorded. He was also confronted with his complaint, where there was no



mention of any threat given by *Ram Dutt Tyagi*.

17. The prosecution also examined *Varinder Singh Dagar*, who had joined the raid proceedings as an independent witness. He deposed that he was posted in FCI alongwith *Jagdish Lal*. Prior to the trap, both of them met *Shri S.K. Peshin*, DSP in the CBI office. He was directed to act as a shadow witness. He did not state that at the time of trap, any phone call was received from *Subhash Chand*. He stated that he did not remember as to who recovered the money. He was declared hostile and was cross-examined by the prosecutor. He denied the suggestion that he sat on the *takhat*. He specifically denied the suggestion that any telephonic call was received by the complainant. He denied that the complainant after receiving the phone call informed him that the same was from *Subhash Chand*. He also denied the suggestion that *Ram Dutt Tyagi* stated that '*Sub Inspector saheb inteazar kar rahe hain*'.

18. The independent recovery witness namely *Jagdish Lal* was examined as PW-4. He deposed that he alongwith *Varinder Singh Dagar* met *S.K. Peshin* in CBI office on 15.07.1994. He was declared hostile on the aspect of recovery and was cross-examined by learned prosecutor.

19. The Trap Laying Officer, Insp. AGL Kaul was examined as PW-8. He deposed about the pre-trap as well as the trap proceedings.

20. In the trial, sanction was proved on record through deposition of *Shri Alok Kumar Verma*, who was examined as PW-2. In the present appeal, no contention has been raised on the issue of sanction.

21. Coming on the aspect of demand, it is pertinent to note that in the complaint (Ex. PW1/A) as well as in the statement of the complainant recorded under Section 161 Cr.P.C., there is no mention of either the initial demand of Rs.5,000/- or of the same being reduced to Rs.3,000/- on the



protest of the complainant or of the payment of bribe of Rs.1,000/-. This aspect is stated for the first time by the complainant in his testimony. In his cross examination, the complainant admitted that he has not stated these material facts either in his complaint or the statement recorded under Section 161 Cr.P.C. There is no explanation as to why these material facts were not earlier disclosed. Thus, it casts a reasonable doubt on the demand attributed to *Subhash Chand*.

Pertinently, there is another material improvement in the complainant's deposition to the extent that in his complaint and statement recorded under Section 161 Cr.P.C., the complainant has stated that on 15.07.1994, *Subhash Chand* had come to his taxi stand between 3.30-4.00 P.M. and threatened that in case the bribe amount is not paid, the complainant would be implicated in a false case. It was stated that *Subhash Chand* would come in the evening to collect the bribe amount. However, in his deposition, there were material contradictions inasmuch as this visit to the taxi stand and threat of arrest in case of non-payment of the remaining bribe amount was now attributed to *Ram Dutt Tyagi*. There was no mention of *Subhash Chand* extending any threat to the complainant.

Although the complainant deposed that a telephonic call was received from *Subhash Chand*, the said aspect was not supported by the shadow witness *Varinder Singh Dagar* in his testimony.

22. At this juncture, it is also pertinent to take note of another submission raised on behalf of *Subhash Chand* that the entire case was planted at the behest of *S.K. Peshin*, DSP, CBI as he was having a grudge against him. Both the independent witnesses i.e., *Varinder Singh Dagar* and *Jagdish Lal* deposed that when they reported in the office of CBI, they met *S.K. Peshin*, DSP in his room. The complainant as well as other CBI officials were



already present and the entire pre-raid proceedings were conducted there. As per their testimonies, *S.K. Peshin* had also accompanied them in the raid. The witnesses have stated in detail about the role of *S.K. Peshin* in the raid proceedings. In fact, in the cross-examination done on behalf of the appellants, *Varinder Singh Dagar* stated that after the trap, *Ram Dutt Tyagi* was taken to CBI office by *S.K. Peshin* in his vehicle. *Jagdish Lal*, in his cross examination, stated that he did not remember any other CBI official except *S.K. Peshin*. He deposed that the proceedings were conducted not at the spot but at a nearby milk booth or a hut type structure. He further admitted that on 7-8 occasions, he had joined as a witness in different cases.

From above, it is apparent that in spite of the fact that *SK Peshin* had played a pivotal role in the pre-trap as well as the trap proceedings, he was not cited as a prosecution witness. It was contended on behalf of *Subhash Chand* that *SK Peshin* was having a grudge against him. In this regard, questions were put to *AGL Kaul*, the Trap Laying Officer, who admitted that in the year 1993, one accused had been arrested by CBI and kept in the lock up of PS Lodhi Colony, where he committed suicide. He also admitted that the said accused was kept in the lock up of PS Lodhi Colony by *SK Peshin*. A suggestion was put that in the enquiry proceedings, *Subhash Chand* represented the case of PS Lodhi Colony and that *SK Peshin* wanted *Subhash Chand* to favour him, which was denied by *Subhash Chand*. The witness claimed no knowledge of the same.

At this stage, it is also pertinent to note that the initial demand of bribe was allegedly made by *Subhash Chand* from the complainant in the presence of one *Nanak Chand*, who was working as a cleaner with *Ranjeet Singh*. Neither *Ranjeet Singh* nor *Nanak Chand* were cited as witness. The non-examination of the above three persons has not been explained by the



prosecution.

23. There is also contradiction in the statement of witnesses on the aspect as to where the proceedings were conducted inasmuch as *Varinder Singh Dagar*, in his cross examination, stated that handwash was taken in the CBI office. He also deposed that the seal used by the CBI was not handed over to him. Further, even the complainant, during his cross-examination, deposed that after his apprehension, the accused was immediately taken to CBI office.

24. In the considered opinion of this Court, the above circumstances cast a reasonable doubt on the prosecution case as well as the aspect of demand. While learned counsels for the appellants as well as learned SPP have referred to several decisions on the aspect of proof of demand and acceptance of illegal gratification, however, recently the said aspects have been authoritatively determined by a Constitution Bench of the Supreme Court in Neeraj Dutta v. State (Govt. of NCT of Delhi)¹³. It has been held that the initial burden is on the prosecution to prove that there is a demand of illegal gratification and subsequent acceptance as a matter of fact. After evaluating the entire case law on the aspect of proof of demand and acceptance of illegal gratification, the Supreme Court summarized the legal position as under:-

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88. 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.

¹³ (2023) 4 SCC 731



(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 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.

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25. The facts of the case, when examined in the light of the aforesaid decision, allows this Court to reach the inevitable conclusion that the



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prosecution has failed to prove beyond reasonable doubt, the demand of bribe as the same is a fact of issue. It is trite that presumption under Section 20 of PC Act is subject to rebuttal by the accused and further, the same does not apply to Section 13(1)(d) of the PC Act. Consequently, the appeals succeed and the conviction is set aside. As a necessary corollary, the impugned judgment and order on sentence are set aside. The appellants are acquitted of the charges framed. Bail bond and surety bond are discharged.

26. In view of the above, the present appeals alongwith pending application are disposed of.

MANOJ KUMAR OHRI
(JUDGE)

MAY 15, 2024
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