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

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Reserved on: October 04, 2023

Decided on: January 15, 2024

+ **CRL.M.C. 6183/2019 & CRL.M.A. 41717/2019**

YOGENDRA MITTAL

..... Petitioner

**Through: M. Vijay Aggarwal,
Mr. Yugant Sharma,
Mr. Hardik Sharma,
Mr. Pankush Goyal and
Mr. Siddharth Bhardwaj,
Advocates.**

V

**CENTRAL BUREAU OF
INVESTIGATION**

..... Respondent

**Through: Mr. Jeevesh Nagrath, SPP
with Mr. Arjun Gaur and
Mr. Rajat Gupta, Advocates.**

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present petition is filed under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “**Code**”) on behalf of the petitioner for Setting aside the order dated 12.09.2019 (hereinafter referred to as “**impugned order**”) passed by the court of Special judge CBI (PC Act)-02, Rouse avenue Courts, Delhi



(hereinafter referred as **“the trial court”**) passed in **CBI V Ulhas Prabhakar Khaire and another** bearing Court Case no 312/19 arising out of RC bearing no RC-AC1 2013 A0001 registered under section 120-B IPC read with sections 7 & 13 (2) and section 13 (1) (d) of Prevention of corruption Act, 1988 (herein after referred to as **“PC Act”**) whereby the trial court passed an order on charge and also framed charges against the petitioner.

2. The facts of the case are that a written complaint dated 27.11.2012 was made by Raj Kumar Saha, Inspector, EOW, Delhi Police and was forwarded by. K.K Vyas, Deputy Commissioner of Police, EOW Crime Branch, Delhi vide letter No. 2540/SO-DCP/EOW seeking necessary legal action regarding illegal gratification demanded by and paid to senior Income Tax Officers. FIR bearing no 152/2011 dated 29.06.2012 was registered at P.S Moti Nagar, New Delhi, and pursuant to the alleged disclosure statement of Ulhas Prabhakar (hereinafter referred to as **“the accused”**) made in FIR baring no 152/2011, RC- AC1 2013 A0001 dated 09.01.2013 was registered by CBI, AC-1, New Delhi under section 120-B IPC and under sections 7, 12, 13(2) read with section 13(1) (d) of PC Act.



2.1 It is alleged that the accused namely Ulhas Prabhakar @ Lokeshawar Dev along with his wife Priyanka Dev were running a firm under name and style of M/s Stock Guru India having its registered office at 58/A-1, Lisa Tower, Rama Road, Moti Nagar, Delhi, They had guaranteed to provide a 20% return per month up to six months on the principal amount followed by a subsequent refund of the principal amount to the seventh month, by prudent and sourced based investments in the share market. However, instead of refunding their investments as promised, the accused and Priyanka Dev shut down their office and ran with the collected money.

2.2 The accused and his wife Priyanka Dev Jain were arrested on 10.11.2011. The accused during the course of custodial interrogation on 18.11.2012 disclosed that on 18/19.01.2011 raids were conducted at his office and residence and large cash amount was misappropriated by Income Tax (IT) officers and subsequently demands were raised and there was acceptance of illegal gratification by Yogender Mittal, ADIT, IT Department, Jhandewalan, New Delhi (hereinafter referred to as **“the petitioner”**). The accused disclosed that at the time of search he had offered illegal gratification to the



petitioner from recovered money to help him in the matter. However, the petitioner demanded illegal gratification from the source other than the already recovered money for showing favor by preparing a favorable appraisal report within 12 months, showing that the accused had an income of Rs.105 crores and adjust the recovered money as Income Tax. The petitioner also promised the accused that all frozen accounts would be opened if he could arrange money for him. The accused further disclosed that he had provided information about his flat no. 9 Hill view Apartments, Bhiwadi, Rajasthan to petitioner where he had kept Rs. 42-44 crores. It was agreed that 50% of the said cash would be kept by the IT officials for a favorable decision. The accused also revealed that petitioner had spoken to other IT officials namely, Mr. Garg and Mr. S. K Singh who were also appraised about the offer of the accused. Mr. Garg also came to the flat in Dwarka where the raids were being conducted and told the accused to cooperate with the petitioner and also assured him that things would be sorted out. The petitioner took the keys of flat situated in Bhiwadi and handed them over to one of his associates who was instructed to bring bags containing cash lying in the said



flat. After a few hours, the accused received a call that the bags have been found. On the same day, 2-3 bank accounts related to the accused were de-sealed and all bank accounts of the accused were de-sealed within a week. The accused alleged that instead of returning 50% of the cash recovered from Bhiwadi, the petitioner made further demand of Rs.30 crores to settle the matter. The accused at the instance of petitioner delivered Rs.5 crores on 02.02.2011 to an address in Lajpat Nagar and also paid second installment of Rs.10 crores on 08.02.2011 at the same place.

2.3 The accused further disclosed that he after paying Rs.5 crores suspected intentions of the petitioner and therefore recorded the conversations with the petitioner, using a camera wrist watch which were downloaded and stored in two separate hard disks. Thereafter on basis of disclosure statement of the accused, two hard disks, one of Toshiba bearing no. XOCPT5BOTIOMS and another hard disk of WD called my passport, serial no. WXP1AB042671 and a spy watch having capability of video recording were recovered on 19.11.12 from his residence of the accused situated at R 100, Zadgaon, MIDC Residential Area, Ratangiri, Maharashtra and from these hard disks



various video files were recovered. These videos indicate that the recovered cash to the tune of Rs. 42-44 crores was misappropriated by Income Tax officers and further bribe of Rs.30 crores was demanded and out of which Rs.15 crores were obtained by the petitioner through an unknown person. Accordingly, RC bearing no. RC AC1 2013 A 0001 Dated 09.01.2013 was registered by CBI, New Delhi under Sections 120-B IPC & Sections 7, 12, 13(2) read with 13(1) (d) of PC Act.

3. The investigation revealed that the accused Khaire and his wife Priyanka dev were engaged in partnership firm under name and style of M/s Stockguru India having registered office at 56/A-1. Liza complex, Rama Road, New Delhi. The firm was accepting deposits from the public at large by offering unrealistic high returns up to 20% per month up to six months on the principal amount followed by a subsequent round of the principal amount to the seventh month on the deposits by prudent and sourced based investments in the share market. The deposits were being collected in cash and interests were paid in cash. The group controlled by the accused was also making payment of commission in cash to various agents who were



mobilizing the deposits. M/s Stockguru India was neither deducting TDS on the monthly interest paid to the investors nor on the commission being paid to their agents. The transactions were also not reflected in the regular books of accounts. The books of accounts were also not maintained.

3.1 The Directorate of Income Tax (Inv.) to investigate the allegations conducted search and seizure operation on 18.01.2011 and 19.01.2011 at the business and residential premises of M/s Stockguru India and its associates. During these searches besides incriminating documents, unaccounted cash of Rs.34.69 crores was seized from various premises of M/s Stockguru India Group. The raids were conducted by a team led by the petitioner, the then ADIT, Unit-VI (I) Income Tax, E-2, ARA Centre, Jhandewalan, New Delhi. The petitioner before conduction of raids threatened the accused by referring the case to EOW, Crime Branch, Delhi Police as his activities related to Multilevel Marketing (MLM) and he was holding huge cash. The accused in pursuance of a criminal conspiracy with petitioner offered a part of the recovered cash to petitioner in order to save himself and the petitioner made demand of extra money for



extending favour and assured the accused of a favorable appraisal report and allowing operation of all his frozen bank accounts. The accused informed the petitioner about Rs. 42-44 crores which were lying at his Flat No. 8, Hill View Apartment, Bhiwadi Rajasthan. The petitioner for extending favor to the accused has agreed to take 50% of the cash lying in the said flat and also obtained the keys of the flat from the accused and got the cash transported. Thereafter, on the same day letter for defreezing of the bank accounts in SBI, Rajouri Garden, New Delhi was issued.

3.2 It was surfaced that during subsequent visits to the office of the petitioner, the accused requested for return of 50% of the cash found at his Bhiwadi Flat but the petitioner made a further demand of Rs.30 crores from the accused. Consequently, the accused on 28.01.2011 delivered Rs. 5 crores in three suitcases and Rs. 10 crores on 09.02.2011 to a person at an address in Lajpat Nagar provided by petitioner. The mobile number of the person to whom this cash was handed over was also provided to the accused by the petitioner. The accused on 03.02.2011 and 09.02.2011 recorded his conversations with the petitioner by using a spy wrist watch. These recordings were



recovered from the hard disks seized by EOW, Delhi Police, from his house situated at Ratnagiri Nagpur pursuant to his disclosure dated 16.11.2012. The recordings reveal that the explicit demand of bribe was made by the petitioner from the accused. The petitioner was also found discussing about suitcase in which the money was to be carried, the specific denomination of the currency, time of delivery and the risk involved in carrying huge cash of money in small vehicle etc. The video clips also reveal conversation between the petitioner and the accused wherein they were found discussing about the amount of money and the denomination of the currency notes. In these conversations the petitioner was found explicitly insisting on minimum denomination of Five Hundred Rupees notes. The conversations also reveal petitioner was asking the accused for delivery on 09.02.2011 instead on 10.02.2011 as he had to go out for some personal work. The petitioner also made available the suitcases in which the money was to be carried and suggested that the delivery be made at night preferably when the chances of interception by the police are less. These conversations are substantiated by the statement of the accused recorded under section 164 of the Code



where he has confessed about demand of bribe by the petitioner and having recorded some of the conversations. During investigation, an audio recording was recovered from a mobile phone/ hard disc which was seized from residence of the accused by EOW Delhi Police which revealed interaction between the petitioner and the accused at income tax office on 28.01.2011. The conversation disclosed that the petitioner was scolding the accused for not fulfilling his commitment despite ten days having been passed. The accused on his part was found explaining this delay to be on account of problem in withdrawing huge cash and promised to fulfill his part of the deal that very day. The petitioner was also found asking the accused not to talk to him through telephone numbers registered in the name of M/s Stockguru India. It was also found that on 28.01.2011, the accused used mobile no. 9650890005 belonging to his employee Surinder Kumar while making delivery of Rs. 5 crore at Lajpat Nagar, New Delhi.

3.3 The accounts bearing number 31311706229, 31532470958 and other account of M/s Stockguru India with SBI, Rajouri Garden, New Delhi which were frozen on 18.01.2011 were defreezed on



19.01.2011 through Hemant Gupta, the then ADIT who happens to be close relative of the petitioner. The petitioner neither informed nor obtained approval from his superiors for allowing operation of these accounts with SBI, Rajouri Garden. It is important to mention that these accounts were frozen on 18.01.2011 and were allowed to be operated on next day i.e. 19.01.2011 when the searches were still conditioning whereas the other bank accounts were defreezed on the basis of request letter dated 20.01.2011 obtained through Sh. Sanjay Gupta, partner of M/s Sanjay Satpal & Associates, Chartered Accountants and Authorized Representative of M/s Stock Guru India (SGI). The petitioner, while moving proposal for obtaining approval for defreezing these bank accounts, willfully concealed the fact that accounts no. 31311706229, 313532470958 and other accounts of M/s Stockguru India with SBI, Rajouri Garden, New Delhi had already been defreezed by Hemant Gupta on his instructions on 19.01.2011.

3.4 It was also surfaced that the investigation pertaining to some of the accounts of the accused, his company and family members revealed that though approval for defreezing of these accounts was obtained by petitioner in a single proposal on 20.01.2011, the



defreezing orders were issued in phases. The bank accounts which were defreezed had sustainable balance and funds were withdrawn through instruments/ cash after the defreezing. The investigation reveals that after defreezing of the Bank account, the accused withdrew funds and absconded but was arrested by the Delhi Police on November 2012.

3.5 The phone no. 9650890005 which was used by the accused on 28.01.2011 was found to be issued in the name of Surender Kumar who was an employee of M/s Stock Guru India. The CDRs and tower location of this number reveal that on 28.01.2011 the accused first visited petitioner in his office at Jhandewalan from where he returned to his house at Dwarka and thereafter went to Lajpat Nagar. The investigation has revealed that on this date, the accused delivered Rs.5 crores to a person whose mobile number was given by the petitioner. The oral/documentary evidence proves withdrawal of Rs.7.5 Ulhas Prabhkar Khaire at Dwarka and thereafter that cash being kept in three suitcases which were loaded in the vehicle and delivered at first floor of house A- 84/A, Lajpat Nagar. It was further revealed that the house at Lajpat Nagar belonged to by Rakesh



Singal, Rajeev Singal and Ravi Singal, who are in-laws of the petitioner.

3.6 During investigation, one video conversation reveals that on 03.02.2011 petitioner provided a mobile no. with four initial digits as 0890 to the accused and this number was of the person to whom the amount was to be delivered. The complete number was not audible in the recorded conversation as after mentioning the first four digit, the petitioner handed over his mobile to the accused for noting down the same. The investigation also revealed that this mobile number 8909294658 was found saved as “Papa Aircel” in the phone of petitioner. The investigation revealed that while he was going to deliver an amount of Rs.5 crores on 28.01.2011, the accused had conversation with this number from mobile of one of his employee Surender. It was also revealed that this number is issued in the name of Wahid Ahmad who is resident of Moradabad and was purchased on the basis of the fake ID Proof.

3.7 The petitioner also had one mobile No. 7669025834 (Reliance UP West) in his Samsung mobile handset having no. 9310010774 saved as “Papa Rahul”. CRDs of mobile No. 9650890005 which



were used by the accused dated 28.01.2011 show that at 15.21.02 hrs., before leaving his house at Dwarka Ulhas Prabhakar Khaire had called on mobile No. 7669025834 which was likely being used by the petitioner or someone close to him. It is revealed during investigation that the number has been purchased from Moradabad in the name of Gulfiya Jamal who denied having purchased the same. It was further revealed that the in-laws of petitioner belong to Moradabad. The CDR of mobile no. 9650890005 showed calls having been made by the accused to mobile no. 7669025834 at 19.16.53 hrs when he was at Lajpat Nagar and finally at 19.46.16 hrs after delivery of the amount.

3.8 It is also mentioned in the chargesheet that the petitioner did not cooperate during investigation and refused to give his voice samples for comparison with the questioned recorded conversation. The accused gave his voice samples voluntarily. The CFSL vide its report dated 05.05.2014 has confirmed that the audio recordings recovered on his disclosure are continuous and without any tampering. CFSL vide report dated 23.07.2014 has also confirmed that the video recordings are also continuous and without any tampering. The



statement of the accused was recorded under section 164 of the Code on 19.12.2013 wherein he stated about the illegal gratification taken and demanded by petitioner.

3.9 The petitioner and the accused were implicated for the offences punishable under section 120B IPC read with Section 7, 12 and 13(2) and section 3(1) (d) of the PC Act. The chargesheet after conclusion of investigation under sections 120B IPC read with Section 7, 12 and 13(2) read with 13(1) (d) of the PC Act has already been filed. The sanction for prosecution required under section 19 PC Act with respect to the petitioner was obtained from the competent authority vide sanction order dated 27.06.2016 bearing No. FNO. C-14011/9/2016-V&L.

4. The trial court vide impugned order on charge charged the petitioner and the accused for offences punishable under section 120 B IPC read with Section 7 and 13 (1) (d) of PC Act and the petitioner was also charged for the substantive offences under section 7 and 13 (1) (d) punishable under section 13 (2) of PC Act, 1988. The trial court while passing impugned order considered following issues:-

33. The prosecution case is primarily based on:



- i.) Disclosure statement of Ulhas Prabhakar Khaire(A-1) dated 16.11.2012 recorded in case FIR No.152/11 PS Moti Nagar,
- ii.) Recovery of spy watch and hard disks in pursuance of said disclosure and contents of audio and video recordings
- iii.)Also on the statement of accused Ulhas Prabhakar Khaire (A-1) recorded u/s 164 CrPC before Magistrate on 19.12.2013 (in the present case during the investigation on his application u/s 306 Cr.P.C)
- iv.) Further on the statements of other witnesses recorded during the investigation.

4.1 The trial court with regard to disclosure statement of the accused held as under:-

34. So far as the disclosure statement of Ulhas Prabhakar Khaire (A-1) dated 16.11.2012 is concerned, as per the defence arguments, same is inadmissible u/s 24 and 25 of Indian Evidence Act 1872. This argument cannot be accepted particularly at this stage as disclosure statement led to the recovery of material evidence in the form of spy watch and hard disks and therefore Section 27 of Indian Evidence Act comes into play. Accordingly, it cannot be concluded that disclosure statement dated 16.11.2012 of (A-1) is completely inadmissible. The recovery of spy watch and hard disks containing audio/video recordings and conversations between Ulhas Prabhakar Khaire and Yogender Mittal is a matter of evidence to be proved by the witnesses of recovery. The contents thereof has to be evaluated during the trial as to what extent they are incriminating in nature. However, on prima facie assessment, I find that audio video recordings contain incriminating material with respect to the delivery of illegal gratification by accused Ulhas Prabhakar Khaire at the instance of accused Yogender Mittal. It would also be premature to hold that these articles are inadmissible in evidence for want of certificate u/s 65 B of Indian Evidence



Act. The alleged recovery has been made from the house of accused (A-1) in pursuance of his disclosure statement and reliability of the piece of evidence is certainly a matter to be determined after the conclusion of evidence.

The trial court about the necessity of certificate u/s 65 B of Evidence Act referred **Shaffhi Mohamimiaci V The State of Himachal Pradesh**, SLP (Crl.) no. 2302 of 2017 decided by the Supreme Court.

4.2 The trial court regarding confessional statement under section 164 of the Code observed as under:-

41. The evidentiary value of a confession depends upon its voluntary character and the precision with which it is reproduced. The requirements and safeguards while recording confessional statements are of great importance, but no statement u/s 164CrPC can be discarded on the face of it. it is always important to take evidence about the conditions and circumstances in which the said confessional statement was recorded. The mere fact that a confession is retracted does not render it inadmissible in evidence, although the court has to scrutinize any such confession with great care and caution. Therefore, it remains a matter of appreciation as to whether the confessional statement of Ulhas Prabhakar Khaire (A-1) recorded u/s 164 Cr.P.C is admissible and to what extent reliance is to be placed upon the same.

4.3 The trial court also observed and held as under:-

44. It is evident that accused Yogender Mittal (A-2) has been involved during the income tax raid on M/s Stockguru



India at its office and residence and therefore A-2 was having dominion over the crucial documents and assets including bank accounts of M/s Stockguru India. It is also evident that huge recovery of cash was effected during the raid. The evidence about demand and acceptance of illegal gratification is coming forth and material on record is sufficient to proceed with the trial against accused persons.

45. The prosecution has been able to raise strong suspicion in the given facts and circumstances about the demand and acceptance of bribe which constitutes offences u/s 7 and 13 (1) (d) of Prevention of Corruption Act 1988. The ambit and scope of Section 7 of Prevention of Corruption Act is otherwise wide enough.

46. On the basis of material, I find that there is sufficient prima facie evidence to proceed against the accused persons for the offences punishable u/s 120 B IPC and u/s 7 and 13 (1) (d) of Prevention of Corruption Act 1988. I therefore conclude that both the accused persons to be charged for the offences punishable u/s 120 B IPC read with S. 7 and 13 (1) (d) of Prevention of Corruption Act, 1988 and accused Yogender Mittal (A-2) also for CBI Vs. Ulhas Prabhakar Khaire & Ann Page No.32 Of 33 the substantive offences u/s 7 and 13 (1) (d) punishable u/s 13 (2) of PC Act, 1988.

5. The petitioner being aggrieved filed present petition to aside the impugned order. The petitioner stated that the impugned order was passed without application of judicial mind and is contrary to the settled principles of law. The impugned order is liable to be quashed and set-aside. The petitioner challenged impugned order on following grounds:-



a. The proceedings under section 13 (1) (d) of the PC Act cannot continue post the amendment of the act in the year 2018.

b. The rigors of the act have been mollified then the benefit of the same ought to be extended to an accused even retrospectively

c. Charge framed under section 13 (1) (d) of the PC Act without specifying the particular sub-section i.e. sub-section (i) or (ii) or (iii) amounts to not giving the accused reasonably sufficient notice to the accused of the matter as the ingredients of the sub-sections are absolutely different

d. Because the foundation of the entire case is itself bad as there is no proof of (a) any demand or (b) acceptance or(recovery) of the alleged illegal gratification by the applicant

e. Because the case of the prosecution is based on no evidence / inadmissible evidence and as such the case against the petitioner is a case of no evidence for the purposes of framing charges

f. The entire case is based on allegations of criminal misconduct, however there is no misconduct, as all the acts performed by the petitioner were legal and as per law

g. No allegations of conspiracy survive as the acts of the petitioner were contrary to the alleged criminal conspiracy

h. No person through whom the alleged bribe was obtained or accepted or delivered have been made an accused

i. The accused has falsely been implicated by biased & unfair investigation by CBI

6. The respondent/CBI filed Status Report.



7. The counsel for the petitioner advanced oral argument and also submitted written submissions. The counsel for the petitioner argued present case is a case of no admissible evidence and the petitioner cannot be made to go through the ordeals of trial without any evidence and placed reliance on **Suresh Budharmal Kalani V State of Maharashtra**, 1998[7] SCC 337. The accused made disclosure statement on 16.11.2012 i.e., after more than 1 years and 9 months of the alleged demand.

7.1 The counsel for the petitioner argued that the trial court has relied upon inadmissible evidence as there is no evidence of transfer from spy-watch to hard-disk from which the video recordings were recorded and the same were recovered from Hard-disk which also showed modification and manipulation. As per CFSL Report spy watch was found to be empty. There is no certificate under section 65B of Indian Evidence Act, 1872 and the accused cannot be given notice under section 91 of the Code to produce certificate. The recording of video and audio conversation without the permission violates the Right to Privacy under Article 21. There are missing videos as different clips have gap between them.



7.2 The counsel for the petitioner further argued that the disclosure statement dated 16.11.2012 made by the accused before EOW is inadmissible and cannot be relied on in present case. The counsel for the petitioner relied on **Noor Aga V State of Punjab and another, (2008) 16 SCC 417** wherein it is held that a statement given in one proceeding is not admissible as evidence in another proceedings. There was also delay in making the disclosure statement. The disclosure statement is inadmissible in terms of Section 24 to 26 of the Indian Evidence Act, 1872 which was obtained out of inducement as is clear from the Retraction made in the bail application.

7.3 The statement of the accused recorded under section 164 of the Code is not admissible and same was retracted by the accused on 16.12.2016. The statement under section 164 of the Code was involuntary and not voluntary as observed by the trial court in impugned judgment. The statement under section 164 of the Code was recorded on oath and relied on **State of Sikkim V Suren Rai, 2018 Cr.L.J. 1972** wherein it has been held as that if the magistrate goes on to administer oath upon the accused it cannot be said that the said magistrate complied with the statutory requirement of the law to



ensure the voluntariness of the confession. The statement was not recorded as Delhi High Court Rules. The statement under section 164 of the Code cannot be relied upon because it was recorded before granting of pardon under section 306 of the Code.

7.4 The trial court has not looked into the un-relied documents of sterling quality which were supplied by the respondent as un-relied upon documents. The seniors of petitioner i.e. Ramankant Garg and S.K.Singh who were allegedly part of the conspiracy were made witness and their statement not been relied by the prosecution. The Statement of Hemant Gupta was recorded on the issue and verified by the CBI from Income tax department but the statement and the relevant communication with the department was concealed by the CBI but given to the petitioner under section 207 on order passed by court. The respondent concealed that the bank accounts were released as per law during search and post search.

7.5 The respondent/CBI failed to establish *prima facie* case against the petitioner. The respondent alleged that there was misconduct on the part the petitioner but the petitioner has acted in the interest of the accused i.e. as per CBI defreezing of the bank accounts, not reporting



the matter to the EOW and favorable IT appraisal report. The counsel further submitted that the bank accounts were not released by petitioner but another officer i.e. Hemant Gupta whose statement was recorded on the issue and verified by the CBI from Income tax department. CBI has alleged that the petitioner has de-freezed bank accounts on 20.01.2011 but the same was done after proper approval from the seniors namely Rama Kant Garg and S.K. Singh. The petitioner has not given any favourable IT appraisal report rather a negative appraisal report was given by the petitioner and also recommended Special Audit. The investigation revealed that release of bank account was proper therefore no criminal charge can be levelled. The counsel placed his reliance on **P. S. Rajya V State of Bihar** 1996 SCC (CRI.) 897 & **Radhe shyam Kejriwal V State of West Bengal and another**, (2011) 3SCC 581.

7.6 The counsel for the petitioner further argued that in the present case there is no recovery of the bribe amount from the petitioner which would prove the custody of the illegal gratification as alleged by the respondent and no case has also been registered against the petitioner for disproportionate assets under the PC Act which itself



shows that nothing has been taken by the petitioner as illegal gratification. The counsel placed reliance on **Dashrath Singh Chauhan V CBI**, Criminal Appeal No. 1276 of 2010 decided on 09th October, 2018, **P.C. Mishra V CBI**, CrI.A.692/2010 and **Dipakbhai Jagdish chandra Patel V State of Gujarat and another**, Criminal Appeal No. 714 of 2019.

7.7 The counsel further argued that the present case is a case of no admissible evidence hence the petitioner is liable to be discharged on the grounds that there is no eye witness of alleged demand by petitioner and alleged Delivery (acceptance) of amount to the petitioner. The counsel for the petitioner with regard to the allegation of payment of bribe of Rs.42-44 crores at Bhiwadi, there is no evidence on record to prove that the petitioner had made any demand. There is also no evidence to prove alleged payment of bribe of Rs.15 crores at Lajpat Nagar as no amount was recovered from the petitioner thus the ingredients of the offence are not made out. The trial court's reliance on the audio/video clips is bad in law. The counsel for the petitioner argued that the present petition be allowed and impugned order be set aside.



8. The Special Public Prosecutor for the respondent/CBI advanced oral arguments and also submitted written submissions. The Special Public Prosecutor with regard to the material which has to be seen and considered by the court at the time of framing of charge relied on **State of Orissa V Debendra Nath Padhi**, 2005(1) SCC 568; **State of Bihar V Ramesh Singh**, 1977 (4) SCC 39; **State of Tamil Nadu V R. Soundirarasu and others**, 2023 (6) SCC 1150; **State of Tamil Nadu V R. Soundirarasu and others**, 2023 (6) SCC 1150 ;**Superintendent & Remembrancer of Legal Affairs, West Bengal V Anil Kumar Bhunja & others**,1979 (4) SCC 274 and **Hem Chand V State of Jharkhand**,2008 5(SCC) 113.

8.1 The Special Public Prosecutor for the respondent/CBI after citing various judgments argued that court while considering a petition under Section 482 of the Code filed against an order of framing charge is not required to hold a mini trial but is only required to see if the trial court has exercised its jurisdiction in accordance with law and defence raised by the petitioner should not be taken into account during the charge-framing stage. Instead the evidence presented by the respondent/CBI should be to taken into consideration to



determine whether there is any evidence against the petitioner that could prevent the discharge under Section 227 of the Code and necessitate the trial court to move forward with framing charges under Section 228 of the Code.

8.2 The Special Public Prosecutor for the respondent/CBI also argued that the petitioner has wrongly and falsely alleged that there is no evidence against him to frame charges against him for trial. It is evident that the accused and his wife Priyanka Saraswat Dev were partners in a firm who were engaged in accepting deposits in cash from the public at large by offering high returns up to 20% per month on the deposits. There were large cash deposits and payouts and there was no deduction of TDS. No proper books of accounts were maintained and the dealings were in cash. The deposits were collected in cash and interest was paid in cash.

8.3 The petitioner was posted as ADIT, Income Tax, Jhandewalan, New Delhi. The income tax raids were conducted on 18.01.2011 on the business and residential premises of the accused and M/s Stockguru India and its associates wherein incriminating documents unaccounted cash of Rs.34.69 crores was seized. The petitioner was



involved in the income tax raids and led the team. The petitioner threatened the accused for referring case to EOW, Crime Branch, Delhi Police. The accused to save him offered a part of recovered cash to the petitioner as bribe. The petitioner also demanded further bribe for extending favours to the accused by assuring him of a favourable appraisal report and for allowing him to operate the frozen bank accounts. The accused informed the petitioner about Rs.42-44 crores which were lying at his flat bearing no. 9, Hill View Apartment, Bhiwadi, Rajasthan and the petitioner had agreed to take 50% of the cash and obtained keys of Bhiwadi Flat from the accused to get the cash transported on that date itself. A letter for defreezing the bank account at SBI, Rajouri Garden, New Delhi was also issued. The petitioner made demand for further bribe money from the accused. On 22.01.2011, Priyanka Saraswat Dev wife of the accused on 22.01.2011 signed and delivered a cheque for Rs. 7.50 crores to Dushyant Singh Tomar (PW-6) to withdraw Rs. 7.50 crores in cash and later Rs. 5 crores in cash was delivered at A-84A Lajpat Nagar-II, New Delhi. The said amount was carried in white Mercedes car of the accused and delivered by him at the said address. The petitioner



had provided the mobile number of the person with whom the accused was coordinating for the delivery of cash and the said number was issued from Moradabad where the petitioner's father-in-law resides but was issued by using forged documents for KYC and about two mobile numbers 8909294658 and 7669025834 reveal that they were saved in the mobile phone of the petitioner as "Papa Aircel" and "Papa Rahul" respectively and it was revealed that numbers have been issued on the basis of fake ID proof in the name of residents of Moradabad. The in-laws of Petitioner belong to Moradabad. The accused met the petitioner on 28.01.2011 and he had audio recorded of the said meeting. The petitioner again met the accused and this meeting was video recorded by the accused by using a spy wrist watch camera. Thereafter as per demand of the petitioner on 09.02.2011 a further sum of Rs 10 crores was delivered by the accused to the property of father-in-law of the petitioner situated at A-84 A, Lajpat Nagar-II, New Delhi. The visitor register maintained at the Income Tax Office, Jhandewala, New Delhi where the petitioner was posted at that time, showed that the accused visited the petitioner on 28.01.2011, 03.02.2011 and 09.02.2011. The call detail



records (CDRs) and tower locations of mobile number 9650890005 which was being used by the accused also showed that on 28.01.2011, he visited the office of the petitioner at Jhandewalan and then returned to his house at Dwarka and thereafter went to deliver bribe of Rs. 5.00 crores at the address of father-in law of the petitioner in Lajpat Nagar, New Delhi.

8.4 The Special Public Prosecutor further argued that the petitioner refused to give voice samples for comparison during the investigation whereas accused voluntarily gave his voice samples. It is confirmed from CFSL reports that the audio and video recordings are continuous and neither tampered nor edited. The accounts of M/s Stockguru and the petitioner were defreezed and he withdrew monies from his account and absconded. The accused in his disclosure statement substantiated the demand and delivery of illegal gratification. The statements of the accused were recorded under sections 161 and 164 of the Code. The accused on 16.12.2016 filed an application to retract his statement under Section 164 of the Code. The accused applied for approver which was not permitted by the court vide order dated 16.05.2015. The accused filed an application



dated 16.12.2016 to retract his statement under section 164 of the Code but he has still maintained that the income tax officials extorted money from him after the raids of 18.01.2011/19.01.2011 and maintained that the income tax officials took money.

8.5 The statements of Rakesh Singal (PW-1), the father-in-law of the Petitioner, Sandeep Malik (PW-3), the PSO of the accused, Anil Kumar (PW-23), the PSO of the accused, Krishna Kumar (PW-5), the driver of the accused, Dushyant Singh Tomar (PW-6), the person who handled the bank related work for the accused, Seema Sehgal (PW-19), Chief Manager, SBI, Rajouri Garden, New Delhi, Priyanka Saraswat Dev (PW-33), wife of the accused were recorded section 161 of the Code. The statements of Dushyant Singh Tomar (PW-6), the person who handled the bank related work for the accused, Krishna Kumar (PW-5), the driver of the accused were recorded under section 164 of the Code.

8.6 There is sufficient material against the petitioner for framing of charges. The statements under section 161 and 164 of the Code showed that the petitioner demanded and accepted bribe from the accused. The petitioner acknowledged receipt of cash money from



the accused in 3 suitcases and agreed to return the empty suitcases with Keys. The petitioner even specified the denomination of currency notes in which he wanted the accused to deliver the bribe money in cash to the petitioner. The petitioner discussed the date and time for delivery of bribe money in cash. The petitioner even discussed that the bribe money in cash should be delivered at night in the Mercedes car as there are less chances of being caught and even if there is checking and if the accused is caught with money, the police will call income tax officers only and the petitioner will take care. The accused mentioned about delivery of bribe money in cash to the petitioner and the bank being suspicious of withdrawal of large amount of cash, the petitioner signalled him not to discuss about the same. The petitioner never denied that such an event did not take place.

8.7 The special public prosecutor stated that as per the settled legal position, as submitted above, charges have been correctly and legally framed against the Petitioner. It is not that the Trial Court is required to form an opinion, at the time of framing charge, on sifting the evidence that the evidence must lead to conviction, and only then the



charges can be framed. The petitioner including any alleged issue of admissibility of evidence or alleged contradiction cannot be looked into at the stage of framing of charge. There is no inadmissible evidence or contradictions in the case.

8.8 The Special Public Prosecutor for the respondent/CBI argued that the allegations of the petitioner that even at the stage of framing charge, the electronic evidence in the form of audio recording dated 28.01.2011 and video recording dated 03.02.2011 and 09.02.2011 cannot be looked at or that the same is inadmissible evidence because the certificate under Section 65B of Indian Evidence Act, 1872 has not been filed is contrary to Law. It is argued that the stage of framing of charge does not contemplate the said certificate. The requirement of filing the certificate under Section 65B of Indian Evidence Act, 1872, will arise at the time when the said record is tendered in evidence and as long as the prosecution evidence is not over the certificate can be submitted with the permission of the trial court. This discretion has to be exercised by the Trial Court when the stage is reached. The reliance was placed on **Arjun Panditrao Khotkar V Kailash Kushanrao Gorantyal**



&Ors. (2020) 7 SCC 1 wherein it was observed held that in case the said certificate under Section 65B of Indian Evidence Act, 1872 is not produced or is not available, then, the Trial Court will see the circumstances in which the said certificate is not produced because the Law does not demand the impossible and where there is a disability which makes it impossible to obey the Law, the alleged disobedience of the Law is excused.

8.9 The Special Public Prosecutor for the respondent/CBI also argued that there is no requirement of direct evidence or recovery of money to convict the petitioner under the PC Act. There is no presumption under law that the recovery is must for conviction of the petitioner.

8.10 The Special Public Prosecutor with regard to arguments of the counsel for the petitioner regarding amendment of the PC Act stated that allegations are wrong and contrary to law and proceedings against the petitioner can survive and continue despite the amendment of PC Act in 2018. He placed reliance on **CBI V A Raja & others** decided on 23.11.2020 in CRL. L.P. 185/2018.

8.11 The special public prosecutor also controverted arguments raised on behalf of the petitioner that the retracted confession of the



accused cannot be relied on and relied on **K.I. Pavunny V Asst. collector**, (1997) 3 SCC 721.

8.12 The Special Public prosecutor in the end argued that the defences as raised by the petitioner of alleged inconsistencies, alleged inaccuracies or alleged inadmissibility cannot be looked into at this stage of framing charges. The petitioner can raise all such arguments at the stage of defence evidence or final arguments. There is no perversity, illegality or infirmity in the order dated 12.09.2019 passed by the Trial Court. The petition is liable to be dismissed.

9. The Chapter XVIII of the Code deals with trial before a Court of Session. Section 227 deals with situation when the accused shall be discharged. Section 228 deals with framing of charge. Sections 227 and 228 of the Code reads as under:-

227. Discharge.-If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which

(a) is not exclusively triable by the Court of Session, he



may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, 3 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

9.1 The purpose of framing a charge is to intimate the accused about the clear, unambiguous and precise nature of accusation that the accused is called upon to meet in the course of a trial as observed in **V.C. Shukla V State through C.B.I.**, 1980 Supp SCC 92. The prosecution is required to establish a prima facie before a charge can be framed. The Supreme Court in **Union of India V Prafulla Kumar Samal & another**, (1979) 3 SCC 4 considered scope of inquiry at the stage of framing of charge as per section 227 of the Code in Sessions criminal trial and observed as under:-

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the



undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

9.2 The Supreme Court in Onkar Nath Mishra & others V State

(NCT of Delhi) & another, Appeal (Crl.)1716 of 2007 decided on 14th December, 2007 regarding framing of charge observed as under:-

It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage,



the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

9.3 The Supreme Court in Dipakbhai Jagdish Chandra Patel V State of Gujarat, (2019) 16 SCC 547 discussed law relating to the framing of charge and discharge and observed as under:-

15. We may profitably, in this regard, refer to the judgment of this Court in State of Bihar v. Ramesh Singh wherein this Court has laid down the principles relating to framing of charge and discharge as follows:

4.....Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to



end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial....

If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.

23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced



after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

9.4 The Supreme Court in Asim Shariff V National Investigation Agency, (2019) 7 SCC 148 expressed that the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. The Supreme Court in **State of Karnataka V M.R. Hiremath, (2019) 7 SCC 515** held that it is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. The



Supreme Court in **Ghulam Hassan Beigh V Mohammad Maqbool Magrey & Others**, Criminal Appeal No. 001041 of 2022 (Arising Out of S.L.P. (Criminal) no 4599 OF 2021) decided on 26th July, 2022 observed as under:-

Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the Court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the Court by the prosecution in the shape of final report in terms of Section 173 of CrPC, the Court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution. (See: *Bhawna Bai v. Ghanshyam*, (2020) 2 SCC 217).

9.5 The Supreme Court in **State of Gujarat V Dilip singh Kishor singh Rao**, 2023 SCC OnLine SC 1294 which is also relied on by the Special Public Prosecutor also observed as under:-



8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of chargesheet material only.

9. If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr. P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.

10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

10. It is reflecting that M/s Stockguru India was a partnership firm formed by the accused and his wife namely Priyanka Saraswat Dev and was engaged in accepting deposits from the public at large by



offering high return of income up to 20 % per month on the deposits. The group was collecting deposits in cash and interests payout were also made in cash. The group was making payment of commission in cash to the various agents. M/s Stock Guru India was neither deducting TDS on the monthly interest paid by them to the investors nor on the commission they were paying to their agents. The cash deposits accepted and the payouts of interest and commission were not reflected in the regular books of accounts by the Stock Guru India Group. FIR bearing no 152/11 dated 29.06.2012 was got registered at EOW PS Moti Nagar. The disclosure statement of the accused was recorded on 16.11.2012 during investigation of FIR bearing no 152/11.

10.1 The accused in disclosure statement disclosed that a team from Directorate of Income Tax (Inv), Delhi led by the petitioner conducted search and seizure operation on 18/19.01.2011 at business and residential premises of M/s Stock Guru India and its associates and during searches besides incriminating documents unaccounted cash of Rs.34.69 crores was seized from various premises of the M/s stock Guru India Group. The petitioner allegedly before conclusion



of raids on 19.01.2011 threatened the accused with referring the case to EOW, Crime Branch, Delhi Police. The accused allegedly offered a part of the recovered cash to the petitioner but the petitioner also demanded extra money for extending favours, assured him of a favourable appraisal report and allowing operation of all his frozen bank accounts. Thereafter, the petitioner on being informed by the accused collected 42.44 crores from the flat bearing no 9, Hill View Apartment, Bhiwadi, Rajasthan and has agreed to take 50% of said cash amount for extending favours to the accused. The petitioner also made further demand of Rs.30 crores from the accused and accordingly the accused delivered Rs.5 crores on 28.01.2011 and Rs.10 crores on 09.02.2011 to a person at Lajpat Nagar.

10.2 The accused on 03.02.2011 and 09.02.2011 video recorded his conversations with the petitioner by using a spy wrist watch and these recordings were recovered from the hard-disks seized by EOW, Delhi Police from house of the accused situated at Ratnagiri, Nagpur pursuant to disclosure dated 16.11.2012. During investigation besides these video recordings, an audio recording was also recovered from a mobile phone/Hard-disc seized from residence of



the accused by EOW Delhi Police revealing interaction between the petitioner and the accused at Income Tax Office on 28.01.2011. Thereafter present RC No. ACI 2013 A000I/CBJ/AC-1/New Delhi dated 09/01/2013 was also registered on the basis of complaint lodged by Inspector Raj Kumar Shah, EOW, Crime Branch, Delhi Police regarding illegal gratification demanded and paid to the petitioner. CFSL Report dated 05.05.2014 has confirmed that the audio recordings are continuous and without any tampering and CFSL Report dated 23.07.2014 has also confirmed that the video recordings are also continuous and without any tampering.

10.3 The accused filed an application under section 306 of the Code on 30.10.2013 for becoming an approver and the statement of the accused under section 164 of the Code was recorded on 19.12.2013. The accused withdrew application under section 306 of the Code on 21.02.2014. The respondent/CBI also filed an application under section 306 of the Code for grant of pardon to the accused which was ordered to be dismissed vide order dated 06.05.2015 passed by the trial court.



11. The main incriminating material which is appearing against the petitioner is the disclosure statement made by the accused on 16.11.2012 during investigation of FIR bearing no 152/11 wherein the accused made allegations of demand and acceptance of illegal gratification by the petitioner from the accused and in pursuance of disclosure statement recovery of hard disks containing video recorded conversation between the accused and the petitioner by using a spy wrist watch on 03.02.2011 and 09.02.2011 and also recovery of an audio recording from a mobile phone/Hard-disc seized from residence of the accused by EOW Delhi Police revealing interaction between the petitioner and the accused at Income Tax Office on 28.01.2011. The trial court in impugned judgment did not accept argument advanced on behalf of the petitioner that disclosure statement of the accused dated 16.11.2012 is inadmissible under sections 24 and 25 of Indian Evidence Act, 1872. The trial court observed that the disclosure statement led to the recovery of material evidence in the form of spy watch and hard disks and therefore Section 27 of Indian Evidence Act, 1872 comes into play and



accordingly, it cannot be concluded that disclosure statement dated 16.11.2012 is completely inadmissible.

11.1 The counsel for the petitioner argued that disclosure statement dated 16.11.2012 made by the accused before EOW is inadmissible and cannot be relied on. It was further argued that disclosure statement recorded on 16.11.2012 in FIR bearing no 152/11 cannot be read and relied in context of present RC recorded by the respondent/CBI and relied on **Noor Aga V State of Punjab and another**, (2008) 16 SCC 417 wherein it was held that a statement given in one proceeding is not admissible as evidence in another proceedings. The counsel for the petitioner further argued that the accused made disclosure statement on 16.11.2012 after expiry of considerable period of 22 months from alleged demand of illegal gratification made on 28.01.2011 & 09.02.2011. The Special Public Prosecutor for the respondent/CBI after relying on **Mohan Lal V State of Rajasthan**, 2015 (6) SCC 222 argued that above noted argument advanced on behalf of the petitioner is contrary to law. It was held as under:-

The words employed in Section 27 does not restrict that the accused must be arrested in connection with the same



offence. In fact, the emphasis is on receipt of information from a person accused of any offence. Therefore, when the appellant-accused was already in custody in connection with FIR No. 95 of 1985 and he led to the discovery of the contraband articles, the plea that it was not done in connection with FIR No. 96 of 1985, is absolutely unsustainable.

11.2 Section 27 of the Evidence Act, 1872 incorporates the theory of confirmation by subsequent facts i.e. statements made in police custody are admissible to the extent that they can be proved by subsequent discovery of facts. Section 27 of the Indian Evidence Act, 1872 reads as follows:

How much of information received from accused may be proved- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

The requirements of Section 27 of the Evidence Act, 1872 were succinctly summed up in **Anter Singh V State of Rajasthan**, (2004) 10 SCC 657 as under:-

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other



evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the own act of the accused.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved.

The Supreme Court in **Raju Manjhi V State of Bihar**, Criminal Appeal No. 1333/2009 decided on 2nd August, 2018 held as under:-

It is true, no confession made by any person while he was in the custody of police shall be proved against him. But, the Indian Evidence Act, 1872 provides that even when an accused being in the custody of police makes a statement that reveals some information leading to the recovery of incriminating material or discovery of any fact concerning the alleged offence, such statement can be proved against him.

11.3 It is reflecting that in pursuance of disclosure statement made by the accused on 16.11.2012 in FIR bearing no 152/11, spy watch and



hard disks containing audio video recording of conversation between the petitioner and the accused were recovered which is a valid recovery within mandate of section 27 of the Indian Evidence Act, 1872. The delay if any in recording of disclosure statement under given facts and circumstances of present case does not invalidate recording of disclosure statement on 16.11.2012. Accordingly arguments advanced by the counsel for the petitioner are without any legal basis.

12. The counsel for the petitioner argued that video recordings are not admissible which were prepared by using spy watch and recovered from hard disks. He further argued that that there is no evidence of transfer of recordings from spy watch to hard disks. The properties of the clips showed modification/manipulations. CFSL Reports also reflect that spy watch was empty. The counsel for the petitioner further argued that no certificate under section 65 B of Indian Evidence Act, 1872 is filed. The special Public Prosecutor argued that allegation of the petitioner that the electronic evidence is inadmissible in the absence of certificate under section 65B of the Indian Evidence Act, 1872 is contrary to law. He further argued that



the prosecution evidence is still going on and has not been completed and stage of framing of charge does not contemplate certificate under section 65B of the Indian Evidence Act, 1872 which can be filed at appropriate stage of trial. The Special Public Prosecutor relied on **Arjun Panditrao Khotkar V Kailash Kushanrao Gorantyal & others**, (2020) 7 SCC 1 wherein it was held as under:

52. We may hasten to add that Section 65-B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108], this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the person concerned, the Judge conducting the trial must summon the person/persons referred to in Section 65-B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the Cr.P.C.



56. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 Cr.P.C or Section 165 of the Evidence Act. Depending on the facts of each case, and the court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case — discretion to be exercised by the court in accordance with law.

59. Subject to the caveat laid down in paras 52 and 56 above, the law laid down by these two High Courts has our concurrence. So long as the hearing in a trial is not yet over, the requisite certificate can be directed to be produced by the learned Judge at any stage, so that information contained in electronic record form can then be admitted, and relied upon in evidence.

12.1 In the present case disclosure statement of the accused was recorded on 16.11.2012 during investigation conducted in FIR bearing no 152/11 wherein the accused disclosed that he on 03.02.2011 and 09.02.2011 video recorded his conversations with the petitioner by using a spy wrist watch which was stated to be



transferred in Hard disks and these recordings were recovered from the hard-disks seized by EOW, Delhi Police from house of the accused situated at Ratnagiri, Nagpur pursuant to disclosure dated 16.11.2012. Thereafter during further investigation an audio recording was also recovered from a mobile phone/Hard-disk seized from residence of the accused by EOW Delhi Police revealing interaction between the petitioner and the accused at Income Tax Office on 28.01.2011. The spy watch during examination by CFSL was found to be empty and prosecution primarily relied on recorded audio video conversation on different dates between the petitioner and the accused. It reflects that spy watch being primary evidence was not containing any conversation between the petitioner and the accused and was found to be empty and hard disks being secondary evidence were found to be containing audio video conversation recorded on different dates between the petitioner and the accused. In view of decisions of **Anvar P.V. V P.K. Basheer**, (2014)10 SCC 473, **Arjun Panditrao Khotkar V Kailash Kushanrao Gorantyal**, (2020) 7 SCC 1 and recent judgment titled as **State of Karnataka V T. Naseer@ Nasir@ Thandiantavida Naseer Umarhazi@Hazi &**



others, Criminal Appeal No.....of 2023 Special Leave Petition (Crl.) No 6548 of 2022 decided on 06th November, 2023 the prosecution is required to file certificate under section 65B of the Indian Evidence Act, 1872 in respect of hard disks but it is settled law that certificate under section 65B of the Indian Evidence Act, 1872 can be filed at any stage of trial and filing is not confined to stage of consideration and framing of charge. There is no force in arguments advanced by the counsel for the petitioner that prosecution against the petitioner is bad for want of certificate under section 65B of the Indian Evidence Act, 1872.

12.2 CFSL Report dated 05.05.2014 has confirmed that the audio recordings are continuous and without any tampering and CFSL Report dated 23.07.2014 has also confirmed that the video recordings are also continuous and without any tampering. As such there is no force in arguments in argument advanced by the counsel for the petitioner that data was not validly transferred from spy watch to hard disks.

13. The counsel for the petitioner argued that in present case there is no admissible evidence and the petitioner cannot be made to go



through the ordeals of trial without any evidence. He placed reliance on **Suresh Budharmal Kalani V State of Maharashtra**, 1998 (7) SCC 337. He further argued that the prosecution has failed to establish motive behind the alleged bribe. The petitioner has not released bank accounts but were released by another officer namely Hemant Gupta. Hemant Gupta also de-freezed bank accounts of the accused and its firm. The petitioner de-freezed bank accounts on 20.01.2011 after proper approval from the seniors namely Rama Kant Garg and S.K. Singh. The counsel for the petitioner further argued that the petitioner has not given favourable IT appraisal report rather Negative Appraisal Report was given by Petitioner. It is further argued that there is no recovery from the petitioner which would have proved the custody of the illegal gratification as alleged by the respondent which itself showed that bribe was not taken by the petitioner as illegal gratification. The reliance was placed on **Dashrath Singh Chauhan V CBI**, Criminal Appeal No. 1276 of 2010 decided on 09th October, 2018; **P.C. Mishra vs CBI**, CrI.A.692/2010; **Dipakbhai Jagdish chandra Patel V State of Gujarat and another**, Criminal Appeal No. 714 of 2019. It was also



argued that there is no proof of demand and acceptance which is must. Reliance was placed on **Shankar V State of Karnataka, MANU/KA/2182/2023;BV Ramesh V State of Karnataka, MANU/KA/2015/2023;Jagatar Singh V State of Punjab, MANU/SC/0288/2023; Imamsab Moulasab Toragal V State of Karnataka, MANU/KA/1734/2023 and Chandrakant Pagar V State of Maharashtra, MANU/MH/2261/2023.**

13.1 The counsel for the petitioner argued that there is no evidence to prove the allegation of payment of bribe at Bhiwadi and there is no evidence to prove that the petitioner had made any demand despite demanding bribe allegedly during on-going raid by the Income Tax Department, when several officials were participating in the said raid. There is no evidence of anyone collecting any money from Bhiwadi. There is no evidence to prove the allegation of payment of bribe of Rs. 15 crores at Lajpat Nagar.

13.2 The Special Public Prosecutor in response to above arguments advanced by the counsel for the petitioner responded by arguing that income tax raid was conducted on 18.01.2011 at the business and residential premises of the accused and M/s Stockguru India and its



associates wherein incriminating documents and unaccounted cash of Rs.34.69 Crores were seized and the raid was continued till 19.01.2011. The petitioner was involved in the raids and was leading the team. The Special Public Prosecutor for the respondent/CBI to establish demand on part of the petitioner stated that the petitioner threatened the accused to refer case to EOW. Crime Branch, Delhi Police and then the accused to save him offered a part of recovered cash to the petitioner as bribe. The petitioner also demanded more bribe for extending favours. Thereafter the accused informed the petitioner about cash of Rs.42-44 crores lying at his flat bearing no. 9, Hill View Apartment, Bhiwadi, Rajasthan and the petitioner agreed to take 50% of the cash and obtained keys of Bhiwadi Flat from the accused and got the cash transported on that date itself. It is further argued that the petitioner issued letter on same day for defreezing the bank account at SBI, Rajouri Garden, New Delhi. The petitioner made demand for further bribe money from the accused. The Special Public Prosecutor to establish acceptance on part of the petitioner stated that Priyanka Saraswat Dev who is the wife of the accused on 22.01.2011 signed and delivered a cheque amounting to



Rs. 7.50 crores bearing no 660814 dated 22.01.2011 drawn on SBI, Rajouri Garden and delivered to Dushyant Singh Tomar to withdraw Rs. 7.50 crores in cash. The accused on 28.01.2011 at night along with his employees i.e. Dushyant Singh Tomar who used to handle bank related work for the accused and Krishan Kumar who was driver of the accused delivered a sum of Rs. 5 crores in cash to the property bearing no.A-84 A, Lajpat Nagar – II, New Delhi, which was owned by Rakesh Singal (PW-1) who is the father-in-law of the petitioner. The amount of Rs. 5 crores was carried in 3 suitcases in the white Mercedes car of the accused and PSOs of the accused were following him in another car. The Special Public Prosecutor also referred use of mobile phone by the petitioner to facilitate delivery. The Special Public Prosecutor to establish demand on part of the petitioner also relied on video recordings recorded on 03.02.2011 and 09.02.2011. The Special Public Prosecutor further referred factual position and stated that the accused on 09.02.2011 as per the demand of the petitioner delivered another sum of Rs 10 crores to the accused at A-84 A, Lajpat Nagar – II, New Delhi which belonged to the father in law of the petitioner. The petitioner refused to give voice samples



for comparison during the investigation whereas accused voluntarily gave his voice samples. The CFSL reports also confirmed audio and video recordings were continuous and neither tampered nor edited. The Special Public Prosecutor relied on disclosure statement of the accused and his statements recorded under sections 161 and 164 of the Code as well as statements of Driver Krishan Kumar and Dushyant Kumar Tomar recorded under section 164 of the Code. The Special Public Prosecutor in light of above facts argued that following facts are duly established on record:-

- i. The petitioner had demanded and accepted bribe from the accused.**
- ii. The petitioner acknowledged receipt of cash money from the accused in 3 suitcases and agreed to return the empty suitcases with keys.**
- iii. The petitioner even specified the denomination of currency notes in which he wanted the accused to deliver the bribe money in cash to the Petitioner.**
- iv. The petitioner discussed the date and time for delivery of bribe money in cash.**
- v. The petitioner discussed that the bribe money in cash should be delivered at night in the Mercedes car as there are less chances of being caught.**
- vi.. The statements of other witnesses recorded under section 161 and 164 of the Code reflecting that petitioner demanded and accepted bribe money from the accused which was and the delivered in cash at father-in-law address of the petitioner.**



13.3 Section 13(1)(d) of the PC Act reads as under:-

13. Criminal misconduct by a public servant.---- (1) A public servant is said to commit the offence of criminal misconduct,-

(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

13.4 The Supreme Court in **Soundarajan V State Rep. by the Inspector of Police Vigilance Anticorruption Dindigul**, Criminal Appeal No. 1592 of 2022 decided on 17th April, 2022 after referring **Mohan Singh V State of Bihar**, (2011) 9SCC272; **Union of India V Ex.-GNR Ajeet Singh**, (2013) 4SCC186 and **Neeraj Dutta V State (Govt. of NCT of Delhi)**, 2022 SCC OnLine SC1724 observed as under:-

9. It is well settled that for establishing the commission of an offence punishable under section of the PC Act, proof of demand of gratification and acceptance of the gratification is a *sine qua non*. Moreover, the Constitution Bench in case of Neeraj Dutta has reiterated that the presumption under section 20 of the PC Act can be invoked only on proof of



facts in issue, namely, the demand of gratification by the accused and the acceptance thereof.

12. There is no circumstantial evidence of demand for gratification in this case. In the circumstances, the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) have not been established. Unless both demand and acceptance are established, offence of obtaining pecuniary advantage by corrupt means covered by clauses(1) and (ii) of Section 13(1)(d) cannot be proved.

13.5 The Supreme Court in **Neeraj Dutta** also referred by the Special Public Prosecutor held that a person could be convicted based on circumstantial evidence for the crime of demanding a bribe or illegal gratification under the PCA, 1988. It was held as under:-

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



“hostile” or the complainant not being available on account of his death or for any other reason. In this regard, it is necessary to discuss the relevant Sections of the Evidence Act before answering the question for reference.

6. Section 13(1)(d) of the Act has the following ingredients which have to be proved before bringing home the guilt of a public servant, namely:

- (i) The accused must be a public servant.**
- (ii) By corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.**
- (iii) To make out an offence under Section 13(1) (d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward.**
- (iv) An agreement to accept or an attempt to obtain does not fall within Section 13(1)(d).**
- (v) Mere acceptance of any valuable thing or pecuniary advantage is not an offence under this provision.**
- (vi) Therefore, to make out an offence under this provision, there has to be actual obtainment.**
- (vii) Since the legislature has used two different expressions, namely, “obtains” or “accepts”, the difference between these two must be noted.**

45. On consideration of the aforesaid cases, the question framed for determination by the larger Bench is as under:

“(1) Whether, in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not 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 Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution?”

66. Section 20 of the Act deals with presumption where public servant accepts gratification other than legal remuneration. It uses the expression “shall be presumed” in sub-section (1) and sub-section (2) unless the contrary is proved. The said provision deals with a legal presumption which is in the nature of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act, etc. if the condition envisaged in the former part of the Section is satisfied. The only condition for drawing a legal presumption under Section 20 of the Act is that during trial, it should be proved that the accused had accepted or agreed to accept any gratification. The Section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification.

75. In B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] , the complainant did not support the prosecution case. In P. Satyanarayana Murthy [P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11] , the complainant had died prior to letting in his evidence in the case. In M. Narsinga Rao [M. Narsinga Rao v. State of A.P., (2001) 1 SCC 691 : 2001 SCC (Cri) 258], the question was whether a legal presumption could be based on a factual presumption. In Hazari Lal [Hazari Lal v. State (Delhi Admn.), (1980) 2 SCC 390 : 1980 SCC (Cri) 458] , this Court through O. Chinnappa Reddy, J. observed that it is not necessary that the passing of money should be proved by direct evidence, it could also be proved by circumstantial evidence. Furthermore, in Madhukar Bhaskarrao Joshi v. State of Maharashtra [Madhukar Bhaskarrao Joshi v. State of Maharashtra, (2000) 8 SCC 571 : 2001 SCC (Cri)



34] (“Madhukar Bhaskarrao Joshi”), it was observed that in order to draw a presumption under Section 20 of the Act, the premise is that there was payment or acceptance of gratification. Once the said premise is established, the inference to be drawn is that the said gratification was accepted as a “motive or reward” for doing or forbearing to do any official act.

87. Therefore, this Court cautioned that even if a witness is treated as “hostile” and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the Judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared “hostile” does not result in an automatic rejection of his evidence. Even, the evidence of a “hostile witness” if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a “hostile witness” testimony if corroborated by other reliable evidence.

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

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

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



evidence which can be in the nature of oral evidence or documentary evidence.

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

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

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

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

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



would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

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

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

88.7. (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

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



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

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

92. Before we conclude, we hope and trust that the complainants as well as the prosecution make sincere efforts to ensure that the corrupt public servants are brought to book and convicted so that the administration and governance becomes unpolluted and free from corruption.

13.6 In the present case prime incriminating material is the disclosure statement made by the accused. FIR bearing no 152/11 dated 29.06.2012 was got registered at EOW PS Moti Nagar and during investigation the disclosure statement of the accused was recorded on 16.11.2012 wherein the accused disclosed that an Income Tax team led by the petitioner conducted search and seizure operation on 18/19.01.2011. The petitioner demanded extra money for extending favours to the accused besides having share in unaccounted money seized during raid. Thereafter, the petitioner collected and transported 42.44 crores from the flat of the accused bearing no 9, Hill View Apartment, Bhiwadi, Rajasthan and has agreed to take 50% of said



cash amount for extending favours to the accused. The accused further disclosed that the petitioner also made further demand of Rs.30 crores from the accused and accordingly the accused delivered Rs.5 crores on 28.01.2011 and Rs. 10 crores on 09.02.2011 to a person at Lajpat Nagar. The disclosure statement made by the accused is not admissible in view of sections 24-26 of Indian Evidence Act, 1872.

13.7 The accused further disclosed that he on 03.02.2011 and 09.02.2011 video recorded his conversations with the petitioner by using a spy wrist watch and these recordings were transferred to hard disks which were seized by EOW, Delhi Police from house of the accused situated at Ratnagiri, Nagpur pursuant to disclosure dated 16.11.2012. An audio recording was also recovered from a mobile phone/Hard-disc seized from residence of the accused by EOW Delhi Police revealing interaction between the petitioner and the accused at Income Tax Office on 28.01.2011. CFSL Report dated 05.05.2014 has confirmed that the audio recordings are continuous and without any tampering and CFSL Report dated 23.07.2014 has also confirmed that the video recordings are also continuous and without



any tampering. The respondent/CBI also filed transcripts of these audio video recordings on record. The video conversations recorded on 03.02.2011 is containing in two files/clips with call duration of 20 minutes and 18.31 minutes which are carefully perused. The transcript of video recording with call duration of 20 minutes recorded on 03.02.2011 does not reflect either directly or by implication that the petitioner has demanded gratification. The transcript of video recording with call duration of 18.31 minutes recorded on 03.02.2011 does not reflect either directly or by implication that the petitioner has demanded gratification. The conversation recorded on 03.02.2011 with call duration of 18.31 minutes is only reflecting regarding arrangement of currency notes in denomination of Rs 1,000/- , arrangement of suitcases and their transportation in Mercedes car during night which may at the most convey delivery of cash amount but not demand in any manner alleged to have been made by the petitioner.

13.7.1The perusal of transcripts of video recordings recorded on 09.02.2011 reflects that there were three files/clips of call durations of 20 minutes, 14.39 minutes, 1.38 minutes which are carefully



perused. The perusal of these three clips/files does not reflect any demand of gratification from the accused by the petitioner.

13.7.2 The audio clip recorded on 28.01.2011 do have reference of Rs.5 crore in conversation but it is not reflecting that the petitioner raised demand of Rs. 5 crores from the accused. There is nothing in said conversation which can reflect demand of Rs. 5 crores made by the petitioner to the accused.

13.8 As argued and pointed out by the Special Public Prosecutor that Priyanka Saraswat Dev, wife of the accused on 22.01.2011 signed and delivered a cheque amounting to Rs. 7.50 crores bearing no 660814 dated 22.01.2011 drawn on SBI, Rajouri Garden to Dushyant Singh Tomar to withdraw Rs.7.50 crores in cash; the accused on 28.01.2011 at night along with his employees i.e. Dushyant Singh Tomar and Krishan Kumar, driver delivered Rs. 5 crores in cash to the property bearing no. A-84 A, Lajpat Nagar – II, New Delhi, which was owned by Rakesh Singal, father-in-law of the petitioner etc. only conveyed at the most delivery of Rs. 5 lacs on 28.01.2011 at Lajpat Nagar but do not reflect demand and acceptance on part of the petitioner. The Special Public Prosecutor further referred that the



accused on 09.02.2011 as per the demand of the petitioner delivered another sum of Rs 10 crores to the accused at A-84 A, Lajpat Nagar – II, New Delhi and this again only conveyed delivery but not demand. The material placed on record is not sufficient to establish demand of gratification by the petitioner and is only able to convey delivery of Rs.15 crores on 28.01.2011 and 09.02.2011 which is also falling short of acceptance by the petitioner particularly no recovery of tainted money was affected from the petitioner or at the instance of the petitioner.

13.9 It is pertinent to refer **K Shanthamma V The State of Telangana**, Criminal Appeal bearing no. 261/2022 decided on 21.02.2022 wherein the Supreme Court has observed that the offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is *sine quo non* for establishing the offence under Section 7 of the PC Act. In this case the Supreme Court has also relied on **P. Satyanarayana Murthy v. District Inspector of Police, State of**



Andhra Pradesh and another (2015) 10 SCC 152 wherein it was observed as under:

“23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.

The Supreme Court in **K Shanthamma V The State of Telangana** held as under:

15. Thus, this is a case where the demand of illegal gratification by the appellant was not proved by the prosecution. Thus, the demand which is sine quo non for establishing the offence under Section 7 was not established.

14. The accused filed an application under section 306 of the Code on 30.10.2013 for becoming an approver and the statement of the accused under section 164 of the Code was recorded on 19.12.2013. The accused withdrew application under section 306 of the Code on 21.02.2014. The respondent/CBI also filed an application under section 306 of the Code for grant of pardon to the accused which was



ordered to be dismissed vide order dated 06.05.2015 passed by the trial court. The accused in statement under section 164 of the Code narrated facts as per disclosure statement. The counsel for the petitioner raised serious doubts as to credibility of statement under section 164 of the code made by the accused and argued that the accused is involved in criminal case with serious allegations and placed reliance on **Dipakbhai Jagdish chandra Patel V State of Gujarat**, Criminal Appeal no 714 of 2019 decided on 24th April, 2019 by the Supreme Court. The Supreme Court in this case referred **Suresh Budharmal Kalani @ Pappu Kalani V State of Maharashtra**, (1998) 7SCC337 wherein view was taken that confession by a co-accused containing incriminating matter against a person would not by itself suffice to frame charges against it. The Supreme Court also referred **Haricharan Kurmi V State of Bihar**, AIR 1964SC1184 wherein it was held as under: -

“As a result of the provisions contained in S.30, Evidence Act, the confession of a co-accused has to be regarded as amounting to evidence in a general way, because whatever is considered by the Court is evidence; circumstances which are considered by the Court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic



sense because of the provisions of S.30, the fact remains that it is not evidence as defined by S.3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the Court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

Thus, the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusions deducible from the said evidence. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.”

The Supreme Court in **Dipakbhai Jagdish chandra Patel** discharged the accused and held as under:-

50. Proceeding on the basis that it is a confession by a co-accused and still proceeding further that there is a joint trial of the accused and that they are accused of the same offences (ignoring the fact that other accused are absconding and appellant appears to be proceeded against on his own) and having found that there is no recovery



from the residence of the appellant of the counterfeit notes and that there is no other material on the basis of which even a strong suspicion could be aroused, we would find that the mandate of the law requires us to free the appellant from being proceeded against. Accordingly, we allow the appeal and the petition filed under Section 482 of the Cr.PC. The Order impugned passed by the Sessions Judge framing the charge against the appellant will stand set aside and the appellant will stand discharged.

14.1 Accordingly statement under section 164 of the Code made by the accused in proceedings under section 306 of the Code is a very weak kind of evidence and cannot be much relied on particularly when the accused withdraw the application under section 306 IPC. The accused is arrayed as co-accused in present FIR along with the petitioner. The antecedents of the petitioner are not clear and he is an accused in FIR bearing no. 0152/2011.

14.2 The trial court in the order dated 06.05.2015 whereby the application filed by the respondent/CBI under section 306 Cr.P.C. for grant of pardon to the accused was dismissed and also pointed out by the Special Public Prosecutor for the respondent/CBI, made observations that the statement of the accused recorded under section 164 Cr.P.C. is a strong piece of evidence in the hands of the prosecution to substantiate the allegations against the petitioner as



well as the accused. These observations as made by the trial court were unwarranted, misconceived and should not have been made at the time of disposal of the application under section 306 Cr.P.C.

15. As observed in **Dipakbhai Jagdish chandra Patel V State of Gujarat and another**, court is not expected to act a mere Post Office at the time of framing of the charge and must indeed sift the material produced and relied upon by the prosecution. The sifting of the evidence should not be meticulous and the court should not don the mantle of trial judge hearing argument after full-fledged trial. The court must be satisfied with the material available on record that the case is made out for the accused to stand trial. A strong suspicion founded on the relevant material would suffice which can be translated into evidence at the stage of trial.

16. In the present case the material collected during the investigation by the respondent/CBI is not sufficient to frame the charge against the petitioner. Accordingly, the present petition is allowed. The impugned order is not legally sustainable. The impugned order dated 12.09.2019 whereby the petitioner was charged for the offences punishable under section 120B IPC read with sections 7 and 13 (1)



(d) of PC Act and for the substantive offences under sections 7 and 13(1)(d) punishable under section 13 (2) of PC Act, 1988 is set aside. The petitioner stands discharged for the offences for which he was discharged.

16. The present petition along with pending applications, if any, stands disposed of.

17. The copy of this order be sent to the trial court for information and further compliance.

**DR. SUDHIR KUMAR JAIN
(JUDGE)**

JANUARY 15, 2024

sk/sd