



2024:DHC:9840



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 4th October, 2024

Pronounced on: 20th December, 2024

+ CRL.A. 435/2013

AJAY BALI

.....Appellant

Through: Mr. Sanjeev Bhardwaj, Advocate alongwith
Appellant in person.

versus

C.B.I.

.....Respondent

Through: Mr. Ravi Sharma, SPP with Mr. Premtosh
K. Mishra, Mr. Praphull Kumar, Mr. Ishann
Bhardwaj & Ms. Madhulika Rai Sharma,
Advocates.

+ CRL.A. 423/2013

ARUN SHARMA

.....Appellant

Through: Mr. D.B. Goswami, Mr. Harinath Ram &
Mr. Arunansh B. Goswami, Advocates
alongwith Appellant in person.

versus

C B I

.....Respondent

Through: Mr. Ravi Sharma, SPP with Mr. Premtosh
K. Mishra, Mr. Praphull Kumar, Mr. Ishann
Bhardwaj & Ms. Madhulika Rai Sharma,
Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

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AMIT SHARMA, J.

1. The present appeals under Section 374 of the Code of Criminal Procedure, 1973, (for short, 'CrPC') have been filed assailing the impugned judgment of conviction and order on sentence dated 08.03.2013 and 13.03.2013 respectively, passed by learned Special Judge, CBI-PC Act, East District Karkardooma Courts, Delhi, whereby, the present appellants have been convicted in AC No. 24/11/06 arising out of RC No. DAI-2005-A-0059-DLI/CBI/ACB/New Delhi, under Section 120B of the Indian Penal Code, 1860, (for short, 'IPC') and Section 7 read with Section 13(2) and Section 13(1)(d) of the Prevention of Corruption Act, 1988, (for short, 'PC Act'), registered with CBI.

2. *Vide* the aforesaid judgment of conviction and order on sentence, both appellants have been convicted for the offences punishable under Section 120B of the IPC read with Section 7 and Section 13(2) read with Section 13(1)(d) of the PC Act. Additionally, appellant/convict, Ajay Bali (hereinafter referred to as, 'A-1'), was also convicted for the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the PC Act. Appellant, Arun Sharma (hereinafter referred to as, 'A-2'), was sentenced to rigorous imprisonment for a period of 01 year alongwith a fine of Rs.10,000/- and in default of payment of fine, to undergo simple imprisonment for 3 months for the offence punishable under Section 7 of the PC Act. A-2 has also been sentenced to rigorous imprisonment for a period of 01 year alongwith a fine of Rs. 10,000/- and in default of payment of fine, to undergo simple imprisonment for 3 months for the



offence of criminal conspiracy for the offence punishable under Section 13(2) read with Section 13(1)(d) of the PC Act. A-1 has been sentenced to rigorous imprisonment for a period of 3 years alongwith a fine of Rs. 25,000/- and in default of payment of fine, to undergo simple imprisonment for 6 months for the offence punishable under Section 7 of the PC Act. A-1 has also been sentenced to rigorous imprisonment for a period of 3 years alongwith a fine of Rs.25,000/- and in default of payment of fine, to undergo simple imprisonment for 6 months for the offence punishable under Section 13(2) read with Section 13(1)(d) of the PC Act.

FACTUAL BACKGROUND

3. Brief facts, necessary for the disposal of the present appeals, are as follows:

- i) On 30.10.2005, complainant namely, Rajesh Arora (PW-9), addressed a complaint (Ex. PW-9/A) to the Superintendent of Police, CBI, ACB, New Delhi, wherein, it was stated that on 22.10.2005, at around 04:00 PM, when he was working in his own furniture shop at Preet Vihar, two police personnel from Bhajan Pura Police Station, one of whom was Ajay Bali-A-1, came in and told him that a murder has taken place in Bhajan Pura and four persons seem to have been involved in the same. They further told PW-9 that, out of those 4 four persons, one had stated that he had stayed at the shop of the complainant (PW-9) for 2-3 days, and therefore,



PW-9 has to come to police station regarding the inquiry of the said murder case.

- ii) PW-9 was then, directed to come to police station on 23.10.2005 in furtherance of the investigation of the aforesaid murder case, however, he was not able to join as it was a Sunday. Thereafter, PW-9 received a call at his shop's contact number (9213106101) from the personal mobile number (9818290099) of A-1 which was picked by his employee. A-1 threatened the employee of PW-9 and told him that if PW-9 does not come then, he has other means to bring the latter to police station.
- iii) On 24.10.2005, PW-9 alongwith his two relatives namely, Vinod Kumar Verma (PW-11) and Surinder Mittal (PW-14), went to Bhajan Pura Police Station, and there, A-1 threatened and told PW-9 that, he can implicate the latter in the said murder case and demanded a sum of Rs. 1 Lakh in order to keep his name out of the said case. PW-9 told A-1 that he cannot arrange such a huge sum of money in a short span of time. So, A-1 gave him time till 26.10.2005, to arrange the said amount, which was further extended till 27.10.2005 at the request of PW-9.
- iv) On 27.10.2005, PW-9 called A-1 (9818290099) from his personal contact number (9213234347) and told him that he was able to arrange only Rs. 50,000/-, to which, A-1 replied that PW-9 can deliver a seven-seater sofa with side table at his residence. A-1 further told PW-9 to do the same by 04:00 PM in the evening as he was not able to come in person on account



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of some reason. A-1 also told that he will adjust the said sofa in the remaining sum of Rs. 1 Lakh and gave him ultimatum till 30.10.2005 to procure the remaining money. As per the directions of A-1, PW-9 delivered a sofa set at the former's residence. PW-9 has also recorded the conversation which took place between A-1 and him on 27.10.2005 on a cassette, which later on, was marked as Q.

- v) On the filing of the written complaint, comprising of aforesaid facts, by PW-9, CBI registered FIR RC No. DAI-2005-A-0059-DLI/CBI/ACB/New Delhi (Ex. PW-9/B) after inquiry and verification of the contents of the said complaint.
- vi) CBI then, constituted a raiding team to lay a trap by associating two independent witnesses being Rang Lal (PW-2) and Veer Bahadur Singh (PW-12) to catch A-1 red-handed. Pre-trap proceedings were also conducted in the office on the same day, i.e., 30.10.2005, and during the said proceedings one miss call was received on the mobile phone of PW-9 from A-1. Then, PW-9, on the instructions of CBI official called back A-1, wherein, the latter talked about the demand of illegal gratification of money and the said conversation was recorded in a digital recorder and the same was kept in a cassette marked as Q1.
- vii) The said constituted team of CBI alongwith PW-9 and the aforesaid independent witnesses went to the furniture shop of PW-9 at Preet Vihar at about 03:00 PM on the same day. Thereafter, at around 05:00 PM, A-2



came there and introduced himself as the person sent by A-1 to collect the bribe amount of Rs. 70,000/- from PW-9. On confirmation of the identity of A-2 from A-1 over a phone call, PW-9 handed over the bribe amount to A-2 and when the latter was counting the currency notes, on pre-planned signal of PW-2, A-2 was apprehended in the said shop itself. A-2 admitted that he was sent by A-1. Handwash of both his hands collected in separate bottles were seized and sealed by CBI. Thereafter, on instructions of CBI, A-2 called A-1 and asked the latter as to where the collected money should be delivered. This conversation was recorded in a cassette marked as Q2. A-2 was also arrested *vide* arrest memo Ex. PW-2/3 and Trap Laying Officer ('TLO')/PW-15 prepared recovery memo-Ex. PW2/2, site plan-Ex. PW-2/4 and also conducted other proceedings at the spot.

viii) Subsequently, a separate team of CBI was sent to police station Bhajan Pura to apprehend A-1, however, he was absconding. CBI team met with Insp. Ombir Singh and collected documents of duty roaster of A-1 and also the records of the case FIR No. 425/05 in connection of which A-1 had demanded Rs. 1 lakh from PW-9 in order to hush up the latter's name from the said case. One dairy being D-26 of A-1 from his room in PS Bhajan Pura was also collected by CBI team in the presence of Insp. Ombir Singh.

ix) On the same day, another team of CBI visited the residence of A-1 at 15-C, Una Enclave, Mayur Vihar alongwith PW-17, Rahul Verma, who was an employee in Indian Railway. At the residence of A-1, CBI team found



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RK Bali, brother of A-1, and Jyotsna Bali, his wife. One five-seater sofa set was recovered from the residence of A-1, which was the one claimed to be delivered by PW-9 on 27.10.2005 in lieu of part payment of the illegal gratification demanded by A-1. One photographer, Surender Kumar Rakshit-PW-4, took the photographs of the said sofa set.

- x) During the course of investigation, CBI collected the voice specimens of PW-9, and his two relatives PW-11 and PW-14, who were present with him at the time when initial demand of bribe was made by A-1. Transcripts of the three audio cassettes being Q, Q1 and Q2 were also prepared by CBI and the same were placed on record as Ex. PW-2/7 to Ex. PW-2/11.
- xi) A-1 surrendered on 22.12.2005 before CBI. His voice, handwriting, and specimen samples were collected. The said samples alongwith the aforesaid audio cassettes and other samples collected by CBI were sent to CFSL for examination. All these samples tested positive. The Call Detail Records (CDRs) of the mobile phones used by PW-9, A-1, A-2, PW-11, PW-14 were obtained and the same confirmed that all of them were in communication with each other during the relevant period from 22.10.2005 to 30.10.2005.
- xii) After completion of investigation, chargesheet was filed before the Court of competent jurisdiction on 30.08.2006. Charges were framed against the appellants *vide* order dated 28.11.2007. Prosecution examined 20



witnesses to prove the charges levelled against the appellants. Both appellants in their statements to the Court under Section 313 of the CrPC denied the case of the prosecution and alleged that they have falsely been implicated by the CBI in the present case. A-1 took the plea that he was implicated as one CBI Insp. Amit Vikram Bhardwaj, to whom A-1 was not able to do a favour when he was posted at PS Mansrover in a case pertaining to one of his relative Surinder Sharma, was holding grudge against him. Whereas A-2, took the plea that he was apprehended by CBI team on 30.10.2005 while he had an altercation with officials of CBI team in the shop of PW-9 where he had gone to inquire about one *settee* (furniture item) which he wanted to purchase.

xiii) To substantiate their pleas taken in statement under Section 313 of the CrPC and disprove the case of the prosecution against them both appellants had led defence evidence. A-1 had examined eight defence witnesses being D1W1 to D1W8 including his wife, Jyotsna Bali. On the other hand, A-2 had examined one defence witness named Kamal Kishore, D2W1, who was an employee of PW-9/complainant and had witnessed the incident in the present case.

xiv) Learned Trial Court after analyzing the testimonies of prosecution as well as the defence witnesses and other documentary evidence placed on record found both the appellants were guilty of the charges levelled against them and sentenced them accordingly, as noted hereinabove.



Hence, the present appeal has been filed assailing the findings of the impugned judgment of conviction and order on sentence.

SUBMISSIONS ON BEHALF OF THE APPELLANT NO. 1

4. Learned counsel for the appellant No. 1 (A-1) has made the following submissions in support of their appeal which are: -

- i) That the impugned judgment suffers from various infirmities and illegalities as the learned Trial Court has not correctly analysed the testimonies of the key prosecution witnesses and the evidence led by A-1 in his defence. It is submitted that to prove the alleged demand of bribe, CBI has placed reliance on the testimonies of PW-9/Complainant; PW-11 and PW-14, relatives of PW-9; Pradeep Kumar-PW-3, worker of the Complainant; and none of these witnesses have supported the case of the prosecution and were declared hostile.
- ii) That the learned Trial Court has erred in placing reliance on the testimony of PW-9/Complainant insofar as demand of bribe by A-1 is concerned as he himself in his cross-examination has stated that in the initial complaint filed by him on 27.10.2005 he had not named A-1. It is in the complaint dated 30.10.2005 (Ex. PW-9/A), which he had written at the instance of CBI officials, he mentioned the name of A-1.



- iii) That CBI in order to prove the acceptance of bribe has placed reliance on the testimonies of PW-9/Complainant, PW-2 Rang Lal, Stock Witness, and TLO/PW-15 Insp. Prem Nath. It is the case of the Appellant that PW-9/Complainant has been declared hostile and other two witnesses are interested witnesses. As per the testimony of PW-2, he had gone to his office where his senior officials, *via* written orders, directed him to report at the CBI office. Attention of this Court has been drawn towards the testimony of Pradeep Nigam (D1W4) wherein, it is stated that 30.10.2005 was a 'Sunday' and PW-2 did not report at office on a 'Sunday'. It is the case of the Appellant that since the said day was a 'Sunday' then, how it is possible that PW-2 had gone to his office or for that matter CBI office on that day.
- iv) It is further submitted that, as per the testimony of PW-9, he alongwith PW-2 was sent by the CBI officials to get a tape recorder at the relevant point in time on 30.10.2005, thereby aspersions have been casted over the presence of PW-2 at the shop of PW-9 at 05:00 PM when the execution of trap was done on 30.10.2005. This fact has also been corroborated by the testimonies of Veer Bahadur (PW-12) and Rahul Verma (PW-17), the independent witnesses, and Kamal Kishore (D2W1), who is the worker at the furniture shop of PW-9. It is further pointed out that the learned Trial Court has wrongly rejected his defence that PW-2 and PW-9 were not present at the spot on 30.10.2005 at 05:00 PM merely on the ground that the said facts were not put to PW-2 during his cross-examination.



- v) It is further the case of the Appellant that the prosecution has not been able to satisfactorily prove the timeline of the series of events that had taken place on 30.10.2005 because as per the testimonies of PW-2 and PW-15 different time frames have emerged regarding the events that took place on the said date. Attention of this Court has been drawn towards the testimony of PW-2, wherein it is stated that he alongwith CBI team had reached the shop of PW-9 at 05:30 PM and A-2 had arrived at about 2½ hours later. However, in contrast to this, recovery memo being Ex. PW-2/2 states that A-2 was apprehended at 05:10 PM. It is further submitted that PW-2 in his testimony had also stated that A-2 had not demanded Rs. 70,000/- from PW-9. Attention of this Court has also been drawn towards the testimony of Kamal Kishore (D2W1), wherein he has stated that A-2 was arrested on account of an altercation that occurred between CBI officials and A-2. Thereafter, CBI officials had taken the cash from D2W1, which PW-9 had kept with him for handing it over to CBI officials, in case, the same is required by them, and the same cash was used by the CBI to array A-2 as an accused in the present case. It has been argued that at the said point in time PW-9 was not present in the shop as claimed by the prosecution.
- vi) Regarding the recovery of seven-seater sofa set alongwith a side table, it is submitted that PW-9 and his worker (PW-3), through whom the said sofa is alleged to have been delivered at the residence of A-1, has not supported the case of CBI. It is further submitted that D1W8, wife of A-1, had



objected to the seizure of the sofa set present in their house as the said sofa was a gift which she had received at her marriage, and her version to this extent, has also been supported by their neighbour, Rohit Saini (D1W2), who had stated that the said sofa was lying in the house of A-1 much prior to the registration of the FIR in the present case. It is pointed out that PW-17 in his testimony had stated that the sofa which was seized by CBI was an old sofa. It is also pointed out that the sofa which was recovered was a five-seater, however, the complaint was regarding the delivery of a seven-seater sofa set in lieu of the bribe demanded by A-1. Attention of this Court has been drawn towards Ex. PW-17/1, seizure memo of the sofa from the residence of A-1, to show the ambiguity in the descriptions of both the sofas and it is submitted that nothing has been brought on record by CBI to show that the said sofa is the one which was delivered by PW-9 to fulfil the demand of illegal gratification made by A-1.

vii) Insofar as the recovery of the cash amount of Rs. 70,000/-, attention of this Court has been drawn towards the testimony of PW-12, who has been declared hostile, and it is submitted that he had stated that he had not witnessed anything pertaining to alleged incident that had taken place in the present case and had left the spot owing to illness. Moreover, D2W1 has also not stated anything regarding the handing over of any such sum of money to A-2.

viii) Regarding the seizure of personal Police Diary of the FIR No. 425/05 (D-27) from Ombir Singh (PW-13) by CBI, it is submitted that the same



stands falsified in view of the reply received to the RTI filed on behalf of A-1 and the testimony of D1W3, shows that no such raid, as claimed by CBI for the recovery of case diary of the FIR No. 425/05, was conducted on 30/31.10.2005 in the room belonging to A-1 at PS Bhajan Pura. It is further submitted that PW-13 was on patrolling duty as per the PS *roznamcha* at the relevant point in time when he claims to have met the CBI officials. It is further submitted that statement under Section 161 of the CrPC of PW-13 was recorded on 27.12.2005, i.e., after the arrest of A-1, and it is only after his arrest and during his police remand, A-1 was forced to write the credentials of PW-9 in his personal police diary which was alleged to have been seized in a raid conducted by CBI on 30.10.2005 from the room belonging to A-1 at PS Bhajan Pura. It is also pointed out that CBI was not having any document whereby it could be said that any writing sample of A-1 was available with them at the time of the seizure of the aforesaid Police Diary and the same has also been admitted by TLO/PW-15 in his deposition.

- ix) In respect of the audio recordings on the basis of which the appellant has been convicted, it is submitted that the said audio recordings are not admissible in view of non-availability of the requisite certificate in terms of Section 65B of the Indian Evidence Act, 1872, (for short, 'IEA'). It is further submitted that the said audio recordings were not put to all the prosecution witnesses and the originals of those recordings have already been deleted by TLO/PW-15. Moreover, the said recordings were



inaudible and distorted and the learned Trial Court had wrongly placed reliance on them. It is also pointed out that the devices from which said recordings were obtained had not been sent to FSL for examination. It is further submitted that the CDRs of the appellant, PW-9 and A-2 which were placed on record by the CBI have already been discarded by the learned Trial Court as no CAF was placed on record by CBI for any of the said mobile numbers ascribed either to the appellants or PW-9/Complainant.

- x) It is further submitted that A-1 has falsely been implicated in the present case as he was not able to return favour to Insp. Amit Vikram Bhardwaj, who in turn hatched the conspiracy to implicate A-1. It is pointed out that the presence of the said Inspector has been proved by Ex. PW-20/2 at the raid conducted by CBI despite the fact that he was not the member of the team who conducted the raid and the same has also been admitted by TLO/PW-15. It is further submitted that GD Entry of CBI received by RTI shows that there was no entry pertaining to the records of the present case FIR during the period of 29/30.10.2005.
- xi) It is further the case of the appellant that the prosecution witnesses being PW-9, PW-11, PW-12, PW-14, PW-17, in their testimonies, have stated that all the seizure memos, recovery memo etc. were prepared subsequently and they were not aware of the contents of the said documents. Therefore, all the recovery as well as the seizure memos



prepared by CBI in the present case were ante-dated and prepared with an ulterior motive to falsely implicate A-1.

- xii)** It is further submitted that CBI has not been able to substantiate their stand that A-1 had demanded money from PW-9 so as to hush up the inquiry in a murder case against the latter as A-1 was not investigating any such case during that relevant point in time and the name of PW-9 and his shop had never emerged during the investigation of the said case. Therefore, it submitted that the impugned judgment and order on sentence be set aside and the appellant be acquitted of the charges levelled against him.

SUBMISSIONS ON BEHALF OF THE APPELLANT NO. 2

5. Learned counsel for the appellant No. 2 (A-2) has made the following submissions in support of their appeal which are: -

- i)** That CBI has failed to prove that A-2 is a conduit of A-1 as there is no relation between them and A-2 has clean antecedents. It is submitted that it is not the case of CBI that out of the alleged bribe amount a certain sum of money was to be paid to A-2. It is further submitted that a perusal of the CDRs of both appellants show that there were three calls between them on 30.10.2005 and, besides these calls, there was no communication that had taken place between them. It is also the case of appellant that these calls were manipulated by CBI to falsely implicate him in the present case.
- ii)** It is further submitted that, as per the case of CBI, mobile number being 9818718507 has been ascribed to A-2 and it is the same mobile number



from which call was made to the mobile number of A-1 on 30.10.2005. However, as per the testimony of PW-5, Nodal Officer of Bharti Airtel, the said mobile number has been registered in the name of Mr. Vijeta. It is pointed out that when IO/PW-20 was cross-examined on this point, he had stated that, neither did he made any inquiry from the said Mr. Vijeta nor had he recorded his statement during investigation. It is the case of the appellant that Mr. Vijeta was another man of CBI, who was neither cited nor examined as witness before the learned Trial Court.

- iii) It is further submitted that except PW-2, all other independent witnesses have turned hostile and had not supported the case of CBI. Moreover, PW-2 in his cross-examination, has admitted that CBI had reached the shop of PW-9 at around 05:30 PM on 30.10.2005 and A-2 arrived at about 2 ½ hours later, which raises a question that who had made the aforesaid calls to A-1 from the mobile number ascribed to A-2. It is further argued that the testimony of PW-2 also lends support to the defence of A-2 which the latter had stated in his statement under Section 313 of the CrPC that he had reached the shop of PW-9 at around 08:05 PM. It is further submitted that from the testimony of PW-2, it is evident that A-2 had not demanded the said sum of Rs. 70,000/- from PW-9. It is further pointed out that the defence witness, D2W1, has also stated that, on 30.10.2005, A-2 had arrived at the shop of PW-9 at around 08:00 PM and not at 05:00 PM. He has further stated that CBI officials did not get any hand wash sample of A-2 nor had they done any personal search of A-2 and no written work



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was done by CBI at the said shop till A-2 was taken to Lodhi Colony. It is also submitted that A-2 was arrested only when he got into an altercation with those CBI officials who were present at the shop of PW-9.

- iv) Regarding the hand wash result of PW-2, it is submitted that PW-6, Senior Scientific Officer, who had examined the said hand wash samples, in his cross-examination had admitted that name of the person to whom the exhibit belongs was not mentioned in his report. It is the case of the appellant that it was the sample of PW-2 which was taken at the time of demonstration in CBI office (pre-trap proceedings) and the same was planted so as to falsely implicate the appellant in the present case and because of this reason only it did not find mention of the name of the person to whom it belonged.
- v) In respect of the voice sample and the report given by expert (PW-1) regarding the voice samples, it is submitted that A-2 in this statement under Section 313 of the CrPC has denied that he had not given any voice sample to CBI on 31.10.2005. It is further pointed out that PW-1 in his cross-examination has admitted that he has not mentioned in his report the parameters on the basis of which he had rendered the said report. Moreover, on being questioned regarding the credibility of the said report, he had stated that it is 90% accurate. Therefore, it is the case of the appellant that reliance placed by learned Trial Court on such a report to convict the appellant is misplaced.



- vi) It is further argued that PW-9 has not supported the case of CBI and has denied the fact that he had handed over a sum of Rs. 70,000/- to A-2 at the directions of A-1. In fact, PW-9, in his testimony, had stated that he has seen A-2 for the first time in the Court on the date of his deposition itself.
- vii) It is further submitted that defence of the appellant has not only been supported by defence witness, D2W1, who is a worker at the shop of PW-9, but also by the prosecution witness, PW-2. Reliance has been placed on **Dudh Nath Pandey v. State of UP¹**, to contend that defence witnesses are to be treated at par with the prosecution witnesses.

SUBMISSIONS ON BEHALF OF THE RESPONDENT/CBI

6. Learned SPP for CBI, refuting the contentions made by learned counsels for the appellants, has made the following submissions: -

- i) That in the instant case the circumstantial evidence and series of events sought to be proved against the appellants has been cogently proved and the learned Trial Court after taking into account the said evidence has rightly convicted the appellants. It is further submitted that chain of circumstantial evidence is complete and consistent with the hypothesis of the guilt of the appellants. Reliance has been placed on **Neeraj Dutta v. State of NCT of Delhi²**, to contend that it is permissible to draw an inference that a public servant is guilty of the commission of offences punishable under Sections 7, 13(1)(d) and 13(2) of the PC Act where, in

¹ (1981) SCC Cri 378

² (2023) 4 SCC 731



case, the direct evidence of the complainant or “primary evidence” of the complainant is unavailable owing to the death or any other reason.

- ii) It is further submitted that the Hon’ble Supreme in **M. Narsinga Rao v. State of Andhra Pradesh**³, while dealing with a case involving similar circumstances wherein, like the present case, the complainant and the shadow witness therein, had turned hostile, had sustained the conviction taking into account the pre-trap and post-trap proceedings which were consistent with the guilt of the appellant therein as discovery of tainted notes is conclusive proof of demand and acceptance of illegal gratification. Reliance has further been placed on **Kishan Chand Mangal v. State of Rajasthan**⁴, to contend that the Hon’ble Supreme Court, in a case, where the complainant had turned hostile has convicted the appellant therein after taking into account complainant’s visit to the Anti-Corruption Bureau, production of currency notes and the trap laid down by superior officers followed by the visit of the raiding party to the house of the appellant therein.
- iii) It is further submitted that PW-2 as well as TLO/PW-15, in their testimonies, have entirely supported the case of the CBI and there exist no inconsistencies and contradictions in their testimonies. Therefore, the learned Trial Court has rightly placed reliance on their testimonies in convicting the appellants.

³ (2001) 1 SCC 691

⁴ (1982) 3 SCC 466



- iv) Regarding the credibility of the testimony of PW-2, shadow witness, it is submitted that he had attended the trap proceedings at the request of CBI and on deputation by his superior officers. Merely because he has acted as a shadow witness in another trap case, the same does not cast aspersion over his credibility and the facts stated by him during the trial of the present case. Reliance has been placed on **Nana Keshav Lagad v. State of Maharashtra**⁵, to contend that the Hon'ble Supreme Court in similar circumstances has held that merely because the said witness had tendered evidence in another case, it cannot be held that on that score alone his evidence should be rejected.
- v) Regarding the presence of PW-2 as well as PW-9 at time when bribe amount was handed over to A-2, it is submitted that the said contention of the appellants is liable to be rejected as this strategy was employed *qua* the witnesses who were declared hostile during the trial. Moreover, the fact that PW-2 and PW-9 were sent to arrange tape recorder by CBI officials has never been put to PW-2 during his cross-examination.
- vi) Insofar as the testimony of PW-2 is concerned, it is submitted that the same is consistent with the case of CBI. A perusal of cross-examination of PW-2 would show that, even after lengthy cross-examination, nothing has been elicited out from his testimony which could have pointed that he was not present at the spot when the bribe amount was handed over to A-2. It is further pointed out that testimony of PW-2 has been corroborated by

⁵ AIR 2013 SC 3510



TLO/PW-15 in material particulars. Reliance has been placed on **Hazari Lal v. State (Delhi Admn)**⁶, to contend that the conviction of a person accused of commission of offences punishable under the Prevention of Corruption Act can be based on the statement of trap officer. Reliance has also been placed on **State of UP v. Zakullaha**⁷, to contend that evidence of trap officer in a bribe case can be acted upon even without the help of any corroboration from any other witness or evidence.

vii) Regarding the testimony of PW-9/Complainant, it is submitted that although he has been declared hostile nonetheless, he has corroborated the case of the prosecution in material particulars such as admission of his specimen on several documents prepared during the course of investigation including complaint (Ex. PW-9/A), FIR, handing over memo, recovery memo, cassette production, sealing memo or transcripts etc. It is further submitted that it is not the case of the appellant that CBI had pressurized him to put his specimens over blank documents. It is also pointed out that, if such would have been the case then, the appellant might have filed any complaint regarding the conduct of CBI which is not the case. It is also pointed out that the recovery of currency notes numbers as per the handing over memo has duly been proved by the testimony of PW-2. The hand wash test has also proved the acceptance of bribe on the part of the appellant and no plausible explanation has been put forth by the appellant so as to dispel the said incriminating evidence.

⁶ AIR 1980 SC 873

⁷ AIR 1998 SC 1474



viii) Reliance has been placed on **Bhagwan Singh v. State of Haryana**⁸ and **Rabinder Kumar Dey v. State of Orrisa**⁹, to contend that the evidence of a prosecution witness cannot be outrightly rejected merely because the prosecution chose to treat him as hostile and cross-examine him. It has further been contended that evidence of such a witness cannot be effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny. Reliance has also been placed on **Maha Singh v. State (Delhi Administration)**¹⁰, to contend that when recovery is duly proved by the prosecution and the defence failed to give satisfactory explanation, then such a circumstance can be taken against the accused to convict him.

ix) It is further submitted that the audio recordings, being Q, Q1, Q2, sealed by CBI were sent to CFSL for examination and positive results were returned on the original cassettes in respect of the voices of the appellants and the complainant/PW-9 and the same were also produced before the learned Trial Court. It is further pointed out that the said conversations were recorded in DVR and then, transferred into cassettes which were sent to CFSL. Therefore, since those cassettes were there in original, so there is no requirement of appending certificate under Section 65B of the IEA. It is further pointed out that PW-1, who is the voice expert, has affirmatively proved those cassettes alongwith transcripts before the learned Trial Court.

⁸ (1976) 2 SCR 921: AIR 1976 SC 202

⁹ (1976) 4 SCC 233

¹⁰ (1976) 1 SCC 644: MANU/SC/0137/1976



Furthermore, those cassettes and transcripts were also exhibited in the testimony of PW-2 without any objection. It is also the case of CBI that since the objection regarding the mandatory requirement of certificate was not raised at the time when those cassettes and transcripts were exhibited, the same cannot be raised at the present stage. Only objection taken by the appellants was during the examination of TLO/PW-15 and the same was regarding the audibility of those exhibits. It is also the case of CBI that the legal situation prevailing during 2005 would be applicable to the present case. Reliance has been placed on **Sonu v. State of Haryana**¹¹, in support of this contention.

- x) Regarding the recovery of the sofa-set from the residence of A-1, it is submitted that, conversation recorded in cassette shows that the said sofa set was sent by PW-9 to A-1 to the fulfil latter's demand for illegal gratification. It is further submitted that the recovery of the sofa is not disputed however, A-1 has taken up a plea that the said sofa was a gift which his wife-D1W8 had received at her marriage. It is pointed out that though PW-3 was declared hostile however, from his testimony, it has emerged that the colour of the sofa was the same which was sent from the shop of PW-9 to the residence of A-1. It is further submitted that, regarding the capacity of the sofa set delivered, PW-9 has only stated in the complaint (Ex. PW-9/A) that a seven-seater sofa alongwith a side table

¹¹ (2017) 8 SCC 570: MANU/SC/0835/2017



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was demanded however, it is PW-3 who has categorically stated that the concerned sofa was a five-seater sofa.

- xi)** In respect of CDRs of the appellants and PW-9 it is submitted that the learned Trial Court has refused to place reliance on them for the want of the certificate under Section 65B of the IEA and even without the aid of the said record prosecution has been to establish their case beyond reasonable doubt against the appellants. It is pointed out that contact number of A-1 and PW-9 has been mentioned in the complaint (Ex. PW-9/A) itself and the contact number ascribed to A-2 was recovered at the spot from the possession of the latter.
- xii)** Regarding the false implication of A-1 because of the grudge of the Insp. Amit Vikram Bhardwaj, it is submitted that nothing has been placed on record by A-1 to substantiate this plea. It is further submitted that had it been a case of malice or false implication of A-1 then, the said Inspector would not have signed Ex. PW-20/2 and could have remain hidden and tried to interfere in the investigation as well as the proceedings of the present case.
- xiii)** With respect to the registration of FIR, it is submitted that the contention of the appellants that the other FIR being RC DAI 2005 A 0058 has specimen of the concerned officer at Sr. No. 15; however, the present FIR does not have the specimen of the concerned officer at Sr. No. 15 is without any substantial proof as a comparison of both FIRs would show



that both FIRs does not have specimens of concerned officer at Sr. No. 15. Nothing has been placed on record by the appellants which would tend to show that there were flaws in the registration of FIR in the present case. Insofar as the delay in registration of FIR is concerned, the same can be cogently explained from the entries in the register of concerned *Ahlmad*. Moreover, nothing has been placed on record by the appellant to show that there was delay on the part of CBI in sending the copy of FIR to the concerned Court.

xiv) Therefore, in view of the aforesaid submissions, it is submitted that the impugned judgment of conviction and order on sentence are not to be interfered as the same has been passed after correct appreciation of facts and material available on record and are to be upheld.

REBUTTAL SUBMISSIONS ON BEHALF OF THE APPELLANTS

7. Learned counsels for the appellants have made the following rebuttal submissions: -

- i) That the learned Trial Court has discarded the CDRs of A-2. Attention of this Court has been drawn towards the testimony of PW-2, stock witness and it is submitted that there has been a material contradiction in his testimony as he denied the fact that whether A-2 had contacted any person on the said day and has stated that no conversation had taken place in his presence, which raises a doubt over the case of prosecution as to the events that had taken place on 30.10.2024.



- ii) It is further pointed out that the testimony of PW-2 does not inspire confidence as he himself has stated that he was standing at some distance from the place where A-2 and PW-9 were having conversation and was unable to hear as to what had transpired during the said conversation between them. However, he has affirmatively testified to the extent that A-2, after arriving in the shop of complainant/PW-9, had asked for collection of seventy thousand rupees on the direction of A-1. This, in itself, is major inconsistency in his testimony and thus creating a doubt on the prosecution case.
- iii) Regarding the recovery of sofa, it is submitted that, as per the testimony of Rohit Saini (D1W2), it has been cogently proved before the learned Trial Court that the subject sofa was lying in the house of A-1 much prior to the date when CBI officials visited house of A-1 on the intervening night of 30/31.10.2005. It is further the case of the Appellant that the sofa has never been produced before the Trial Court and nobody has identified the said sofa during the trial.
- iv) It is further argued that as per the RTI replies placed on record through the testimony of HC Puram Lal (D1W1), it is manifestly clear that no raid as claimed by the prosecution has been conducted at the PS Bhajan Pura on 30.10.2005 as there is no relevant *roznamcha* entry in the PS Bhajan Pura pertaining to the said raid being conducted on the said day.



- v) Attention of this Court has been drawn towards the testimony of TLO/PW-15 and it is submitted that he has admitted that the recording of the conversations that took place on 30.10.2005 in the digital recorder has been deleted and therefore, the possibility of those conversations and transcripts prepared thereupon being manipulated cannot be ruled out.
- vi) It is further submitted that this witness (TLO/PW-15) though has stated the name of Amit Vikram Bhardwaj as one of the members of the team sent to PS Bhajan Pura, the same cannot be relied upon and taken as gospel truth as no other witness from the said raiding party has been examined by the CBI during the course of trial. Attention of this Court has been drawn towards site plan (Ex. PW-2/4) wherein the names of the members of the raiding team (being CK Sharma, SS Bhullar, Insp. Amit Vashisht), who were sent to PS Bhajan Pura on 30.10.2005, have been mentioned and it is pointed out that in the said site plan the name of the Inspector Amit Vikram Bhardwaj has not been mentioned. It is, therefore, argued that either Insp. Amit Vikram Bhardwaj was present at the shop of PW-9 at the time when A-2 was apprehended or all these documents have been prepared afterwards so as to falsely implicate the present appellants.

ANALYSIS AND FINDINGS

8. Heard learned counsel for the parties and perused the record.
9. It is a matter of record that the complainant/PW-9 as well as the other relevant witnesses sought to be examined by the prosecution in support of their



case have turned hostile. It is argued by learned SPP that evidence of PW-2, i.e., the shadow witness and TLO/PW-15 can be looked into despite the fact that complainant had turned hostile. Reliance has been placed on a judgment of the Hon'ble Supreme Court in **Neeraj Dutta (supra)** in support of this contention. It is also submitted that although the complainant/PW-9 has turned hostile, he, however, in his testimony has admitted the fact that he had gone to CBI office to make a complaint regarding Police Officials of P.S. Bhajan Pura. It is further submitted that this shows that the complainant/PW-9 who has, however, turned hostile at the time of his examination had otherwise made admissions which corroborates the testimonies of PW-2 and TLO/PW-15, as stated by them, to the extent that a raid was indeed organized and conducted on the date of the incident by the CBI officials.

10. At this stage, it is relevant to note that as per the case of the prosecution, the persons who were present at the spot were PW-2/shadow witness, the complainant/PW-9, the other independent witness/PW-12, who was deputed alongwith PW-2 to accompany the raiding team and TLO/PW-15 himself. Out of these witnesses, PW-9 and PW-12 have turned hostile. PW-12, who was the other independent witness, has not supported the case of the prosecution at all and has stated on record that all the documents that he had signed were at the CBI office on the next day.

11. Rajesh Kumar Arora, complainant/PW-9, in his testimony before the learned Trial Court, has stated in the following manner: -



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“PW-9 Sh. Rajesh Kumar Arora S/o Sh. Har Kishan Lal Arora, aged 44 yrs., R/o T-2539, H.S. Road, Karol Bagh, Delhi.

At present, I am running a General Store at the above stated address. In the year 2005, I was running a furniture shop under the name and style of Shashwat Furnitures at Bharti Artists Colony, Preet Vihar, Delhi. On 22.10.05, at about 12.00/1.00 pm, two police men from Police Station Bhajan Pura came to my shop and told that they have come from Police Station Bhajan Pura and told that some murder has taken place in Bhajan Pura and I was asked to come at Police Station on the next day ie. 23.10.05. On the next day, I could not go to Police Station due to some urgent work at home. When I reached at my shop on the same day in the evening, it was told by my worker that a policeman had come to the shop and asked to come to Police Station, otherwise, we know to call the person in Police Station. On 24.10.05, I alongwith my relative went to Police Station, where I was made to sit in a separate room. One of the policeman who had come to my shop on 22.10.05 came to me and asked as to why I did not come on 23.10.05 and harassed me for not coming yesterday. Thereafter, I asked them to call my relatives who were standing outside the room. My relatives Sh. Vinod Kumar Verma and Sh. Surender Mittal came inside the room and they told me that they have been informed by the police that two of the persons who are involved in the murder case of Bhajan Pura, were sheltered by staying at the shop in the night. Then, I told them that key of the shop remains with me, then there is no question of sheltering them. Then I asked my relatives to settle the matter as I am annoyed by the harassment of the police. My relatives told that the police personnel are asking for one lakh rupees to settle the matter. I told my relatives that I do not have the amount of rupees one lakh. I further told that I need some time for arranging the said amount. On this, my relatives talked to the police and took time till 27.10.05 to make arrangement of said amount. I came back from the Police Station. Since, I was not inclined to pay the said amount, I contacted the CBI people in this context on 26.10.05 and narrated the entire story. After hearing my story, CBI Officials asked me to give the complaint in writing which I gave on 27.10.05. After receiving my complaint, CBI officials called two independent witnesses, name of whom, I do not recollect today, and I was introduced by the CBI Officials with these independent witnesses. Thereafter, I was asked to produce the bribe amount by the CBI Officials.



The amount consist of currency notes of Rs.500/- and Rs.1000/- denomination. I do not remember the exact number of notes. Thereafter, the notes were treated with some powder and one the member of the team was asked to touch the notes and to dip his hand in colour less solution. The demonstration was given but what happened to the colour less solution, I do not remember. I do not remember whether any other proceedings as I narrated above, was done in the CBI office. Thereafter, at about 5.30 pm, we left CBI Office for my shop with CBI Team. We reached at my shop at about 6.30 pm on the same day. On that day, none of the policemen came to my shop to collect the said amount. Again on 29.10.05, a policeman from Police Station Bhajan Pura came to my shop to give message that I may arrange the amount of Rupees one lakh by 30.10.05. I again visited CBI Office on 30.10.05. The CBI officials repeated the same proceedings which they had done on 27.10.05 at CBI Office after receiving my compliant. We left CBI Office at about 4.30 pm for my shop and reached there at about 5.00/5.15 pm, CBI persons took their positions respectively as decided. When the CBI officials checked their bag, they told that they have forgotten to bring the audio recorder. CBI Officials asked me to arrange the audio recorder. I went to arrange the audio recorder and when came back, it was informed by my worker at my shop that he had handed over the amount to Arun Sharma, who had come to collect money from Police Station Bhajan Pura. When I came back at my shop, CBI Team was doing trap formalities. Then, I was asked by CBI officials to write another complaint. I have been shown the complaint (running into two pages) which is now exhibited as Ex. PW9/A which bears my signatures at point A on both the pages. I have been shown the FIR No.RC-DA-I-2005-A-0059 dated 30.10.05 which is Ex. PW9/B which bears my signatures at point A at page no.4. I have been shown handing over memo dated 30.10.05 already Ex.PW2/1 (running into four pages) which was prepared in the CBI Office in which the number of GC notes were recorded which bears my signatures at point B. I have been shown cassette production and sealing memo dated 30.10.05 already Ex. PW2/4 which bears my signatures at point Y. Further I have been shown recovery memo already Ex. PW2/2 (running into ten pages) which was prepared at my shop by the CBI officials which bears my signatures at point Y.”

This witness was declared hostile and cross-examined by the learned APP during which he denied the fact that the complaint that has been made against



A-1 was lodged by him. Although, he has admitted that he had made a complaint against the police officials of P.S. Bhajan Pura, however, he did not give the name of those police officials. He has further denied the suggestion that it was A-1/Arun Bali who had demanded bribe from him. He has further denied the suggestion that he had sent any sofa set to A-1. He has further categorically stated that he had made a complaint on 27.10.2005 against police officer of PS Bhajan Pura and that the complaint (Ex. PW-9/A) which has been exhibited in the Trial Court, on the basis of which the present RC was registered, was made by him at the instance of the CBI officers on 30.10.2005.

12. In the present case, the CBI sought to prove the factum of demand of illegal gratification through the testimonies of the complainant/PW-9 and his relatives Vinod Kumar Verma (PW-11) and Surender Mittal (PW-14), who had accompanied the complainant/PW-9 to the police station on 24.10.2005, when the demand for illegal gratification was made by A-1. The prosecution further rests their case on three audio tapes being, Q, Q1 and Q2 alongwith the expert report (Ex.PW-1/B) matching the voice specimen of A-1. Further reliance was placed on the CDRs reflecting the communication between the complainant/PW-9 and A-1 and between A-1 and A-2 at the relevant point in time. As stated hereinbefore, PWs No. 9, 11 and 14 have been declared hostile and one of the independent witnesses, i.e., PW-12 (Vir Bahadur Singh), has also been declared hostile. The cassettes Q, Q1 and Q2 when played before the learned Trial Court were not audible and the same have been relied upon by the learned Trial Court by relying on the expert report (Ex.PW-1/B). In these circumstances, the learned



Special PP has relied heavily on the fact that an amount of Rs. 70,000/- was handed over in the presence of PW-2 to A-2, who was alleged conduit for A-1. Thus, in other words, the demand by A-1 has also sought to be proved by acceptance of the bribe money by A-2 and its recovery from the spot. In the aforesaid circumstances, the fact that A-1 and A-2 knew each other and therefore, the latter was asked by the former in order to accept the alleged bribe from PW-9 on his behalf becomes relevant and had to be proved by the prosecution.

13. It is the case of the prosecution that, on 30.10.2005 during the pre-trap proceedings, the A-1 had given a missed call to complainant/PW-9 and on the instructions of CBI official PW-9 had called back A-1 during which it is alleged that the latter had spoken with the complainant/PW-9 regarding the demand of illegal gratification. Accordingly, the trap team arrived at the showroom of PW-9, and as per shadow witness PW-2, A-2 arrived at the showroom and told PW-9 that he has been sent by A-1 for collecting the bribe amount. PW-9 then, called A-1 on his mobile phone and after confirming the identity of A-2, the money was handed over to him.

14. It is a matter of record that complainant/PW-9 has completely denied the aforesaid position and, in fact, as per his statement, he was not present at his shop and had gone alongwith PW-2 to arrange a voice recorder. Thus, PW-9 has not supported the case of the prosecution regarding his communication with A-1 in respect of handing over of money to A-2 or that he handed over the money to



A-2. Similarly, PW-12 (Vir Bahadur Singh), independent witness, has also not supported the case of the prosecution with regard to the aforesaid incident.

15. The other circumstance relied upon by the prosecution was CDRs of the mobile number being 9818718507 alleged to be used by A-2 and his connectivity with alleged mobile number of A-1 i.e., 9818290099. It is the case of the prosecution that on 30.10.2005, A-2 and A-1 had exchanged 3 calls with each other. The aforesaid CDRs have been discarded by the learned Trial Court itself in the absence of any certificate under Section 65B of the IEA. The other circumstances relied upon with regard to presence of A-2 at the spot was the conversations recorded in cassettes Q1 and Q2, which as pointed out hereinabove, were not audible during the course of trial and has been relied upon only on the basis of expert report (Ex.PW-1/B).

16. As per the testimony of TLO/PW-15, the complainant/PW-9 informed him that he has to call his uncle (PW-14) who would disclose as to whom the bribe money is to be handed over. From the said testimony, it has further come on record that complainant/PW-9 called up the aforesaid PW-14, who informed the former that A-1 will send somebody to collect the bribe money. Thereafter, they waited for the concerned person to come to the showroom and at about 05:10 PM that day, one person was seen coming inside the shop, who spoke to complainant/PW-9. As per this witness, PW-2 (shadow witness) was standing at close distance from PW-9 and the said person and on a pre-planned signal being given by the shadow witness, the raiding team arrived at the spot and caught A-2



who had the money in his hand. Thus, it is pertinent to note that till this point of time, identity of A-2 was not known to anyone.

17. Except for the CDRs, which have not been relied upon by the learned trial Court, there is no evidence on record which could show that A-1 and A-2 knew each other beforehand and there is no iota of evidence either oral or documentary to show that these appellants knew each other. A-2 is a private person, who otherwise has no connection with A-1 at all, and, therefore, it is highly improbable that A-1 would send a complete stranger to collect the bribe money on his behalf.

18. The connection between A-1 and A-2 has been sought to be proved through audio cassette Q-2, which was recorded at the spot and alleged to have contained the voice of A-2. As pointed out hereinabove, all the three audio cassettes, Q, Q1 and Q2 when played in the learned Trial Court were inaudible. In fact, in the evidence of TLO/PW-15, it has categorically come on record that the audio cassettes were not audible. The relevant portion of the testimony of TLO/PW-15 reads thus: -

“It is correct that cassettes Q-1 and Q-2 heard by me during my examination in chief were not clear and the same was not audible being distorted due to very much disturbance of traffic and other persons. It is also correct that I could not point out or identify the voices of the persons in the aforesaid cassettes due to heavy disturbance being unaudible. It is also correct that several times attempts were made to play the said cassettes but it could not be done so due to the aforesaid reason.”



19. It is pertinent to note that the learned Trial Court has relied upon the testimony of the expert and report (Ex. PW-1/B) given by him to hold that the voice of A-2, A-1 and complainant/PW-9 has been examined by the expert (PW-1). A perusal of the Ex.PW-1/B would show that the cassettes i.e., Q, Q1 and Q2 were forwarded to the laboratory with forwarding letter dated 27.12.2005 alongwith transcriptions of the telephonic conversation between the complainant/PW-9, A-1 and A-2, however, it has come on record that the transcripts in the present case, i.e., Ex. PW2/7, PW-2/8, PW-2/9, PW-2/10 and PW-2/11, were prepared on 24.04.2006 much after the forwarding letter has been sent to the CFSL. There is nothing on record to show that as to which transcript was sent by the CBI to the CFSL alongwith the said forwarding letter. In these circumstances and in absence of the comparison by any witness, of the aforesaid transcript with the voices contained in the cassettes before the learned Trial Court, the mere reliance on the aforesaid report is not tenable. There is, admittedly, no evidence on record to show that any of the witnesses identified the voices contained in the cassettes by comparing with the transcript, or for that matter, comparing the transcript with the conversation in the cassettes. In these circumstances, no reliance can be placed on the aforesaid cassettes.

20. It is the case of the prosecution that mobile number 981829099 belong to A-1 and mobile number 9818718507 belong to A-2. Reliance has been placed on the CDRs placed on record by the Nodal Officer to show that there were calls between these two numbers on the said date, i.e., 30.10.2005, at the relevant point in time. It has come on record that the mobile number being attributed to A-2 was



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in the name of one Mr. Vijeta. The said Vijeta has not been examined. No other evidence has been placed on record to show that this number was being used by A-2. The subscriber details available with the service provider alongwith the customer application form (CAF) has not been placed on record. It is pertinent to note that in the CDR the three calls relied upon by the prosecution in order to connect A-1 with A-2 were made on the date of alleged incident, i.e., 30.10.2005. However, there is no call reflected prior to or after the alleged date of incident in the CDR which could show any connectivity between these two numbers. If the appellants knew each other and were having conversation on these numbers in between themselves then there ought to have been other calls exchanged between them prior to 30.10.2005 or thereafter. Learned Trial Court holds that since the telephone has been shown in the seizure memo post the arrest of A-2 at the spot, it should be presumed that the number belonged to the said appellant. As noted hereinbefore, the proceeding alleged to have been conducted at the spot is itself in shadow of doubt. Thus, no evidence has been proved to show that A-2 was using this mobile phone at that relevant point in time.

21. Learned SPP for CBI had submitted that the objection with regard to exhibiting of the CDRs without a certificate under Section 65B of the IEA was not taken and, therefore, there was no opportunity for the CBI to have led the evidence on record. In this regard, it will be relevant to observe that IO/PW-20, who had filed the chargesheet, during his cross-examination, was shown the judicial record of the case and after seeing the same he had admitted and acknowledged that no certificate under Section 65B of the IEA was placed on



record. In these circumstances, the prosecution was already put to notice that there was no certificate under Section 65B of the IEA on record and despite the same, no attempt was made to lead any additional evidence with regard to the certificate under Section 65B of the IEA. Be that as it may, this Court is of the considered opinion that mere CDRs would not establish the connection of the A-2 with the mobile number, being 9818718507, in absence of any other evidence to support that the A-2 was the actual user of the said mobile number during the relevant point in time.

22. PW-2 (Rang Lal), shadow witness, has in his testimony recorded before the learned Trial Court stated that on 30.10.2005, he was working as Field Officer in NCCF, Nehru Place and on that date, he was directed by his senior officers in writing to attend CBI office at CGO Complex. It has come on record by way of testimony of D1W4, who was summoned witness, posted with NCCF and had brought the attendance register of the trading section for the month of October 2005, more specifically, of 30.10.2005. As per the said register, the attendance record pertaining to PW-2 was at serial No. 15 at point A Ex. D1W4/DA (colly). It has further come on record that on 30.10.2005, none of the office staff of NCCF had attended the office as it was a weekly off being Sunday.

23. D1W4 has further placed on record letter dated 27.10.2005, received from Superintendent of Police, CBI, ACB (Ex. D1W4/A-1). In response to the same, a letter of the even date was issued by A.K. Malhotra, Deputy Manager (Vigilance), requisitioning N.K. Awasthi, Assistant Manager, Accounts and



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Rang Lal (PW-2), Field Officer, to attend the CBI Office on 28.10.2005 at 10:00 A.M which has been exhibited as Ex. D1W4/A-2. Thus, there was no occasion for PW-2 to be present with the CBI team on 30.10.2005.

24. Further, PW-2 has also admitted the fact that he had been witness for the CBI in other cases as well. It is pertinent to note that no authority has been placed on record to show that PW-2 was summoned by CBI on the date of incident, i.e., 30.10.2005, which happened to be a Sunday. In view of the fact that the other independent witness (PW-12) has turned hostile, it would not be safe to rely on the testimony of PW-2 for the purpose of establishing the fact that PW-9 has spoken with A-1 from his phone to confirm the identity of A-2.

25. A-2 has also examined Mr. Kamal Kishore (D2W1) in his defence, who was working at the showroom of complainant/PW-9 at the relevant point of time. As per this witness, on 30.10.2005, CBI team had come to the shop alongwith Rajesh Kumar (PW-9) at about 06:00 PM and they were 10-12 in number. He has further stated that after sitting for some time, they instructed PW-9 to arrange one tape recorder as they had forgotten to bring the same, and accordingly, PW-9 left the shop alongwith some other person to get a tape recorder. He further stated that PW-9 while leaving the shop had handed over to him a packet that contained currency notes with instructions that, in case, it is demanded by CBI officials, then he should hand over the same to them. As per this witness, at about 08:00 PM, one Arun, whose name he got to know later, came to the shop and made an inquiry for one “*settee*”. After some conversation with Arun, D2W1 told him that the owner of the shop (PW-9) can tell whether he can get the *settee*



manufactured for him or not. On this, Arun asked D2W1 to inquire from PW-9 but D2W1 told him PW-9 does not have any phone. As per D2W1, in the meantime, CBI officials came there and started talking to Arun (A-2) and when the latter inquired from the CBI team whether they are the owners of the shop then, there was an altercation/quarrel between them. Thereafter, it is stated by him that CBI officers asked him to hand over the packet of cash given to him by PW-9, which he handed over to them, and thereafter, they left the shop except 2-3 officers, who remained in the shop. This witness further stated that PW-9 returned to the shop at 09:00 PM and he conveyed the entire incident to him. This witness further stated that PW-9 was asked by officer of CBI to write a fresh complaint on which the latter told him that he has already given a complaint in the office but on the insistence of the CBI team he wrote a fresh complaint on their dictation. This witness was cross-examined by learned PP for CBI, however, he maintained his line of deposition stated by him in examination-in-chief and denied the suggestions put to him by the prosecution.

26. Yet another discrepancy in the prosecution case is that in the handing over memo Ex. PW-2/1, it is clearly mentioned that the digital recorder was handed over to the complainant/PW-9, however, in his examination recorded on 03.11.2011, TLO/PW-15, he had stated as follows: -

“We also arranged three number of cassettes make TDK-90 and a Sanyo Compaq cassette recorder.”

This fact is conspicuously absent in the handing over memo (Ex. PW-2/1). This witness, in his cross-examination, has also admitted that whatever is handed



over to the complainant/PW-9 and tagged alongwith the trap team is mentioned in the handing over memo. The fact that the aforesaid cassette recorder and TDK cassettes were not mentioned in the handing over memo, in fact, corroborates the statement made by complainant/PW-9, which is further corroborated by the testimonies of PW-12 and D2W1 that after reaching the spot, the CBI team realized that the tape recorder was not available, and thus, complainant/PW-9 alongwith PW-2 had gone to arrange the aforesaid items.

27. Similarly, TLO/PW-15, in his cross-examination, has stated that all the written work was done at the spot itself, however, PW-2 in his examination-in-chief has candidly admitted that after the raid he had left the place of occurrence for his house and the memos were prepared when he had again visited the CBI office. The relevant portion of his testimony reads thus: -

“At about 11.30 pm, I left the place of occurrence for my house. Thereafter I again visited the CBI office and memos were prepared at the CBI Office. Cassette was played. I do not remember if any transcript was prepared.”

This also further creates a dent in the prosecution story with respect to papers being prepared at the spot.

28. The other circumstance sought to be proved by the prosecution against the A-1 is that during the search of his house in search memo Ex. PW-20/2, it is stated that a sofa set was found which was alleged to have been sent by the complainant/PW-9 as part payment for the alleged demand of illegal gratification made by him. The prosecution has relied on the statement of PW-3, worker in the shop of complainant/PW-9, in this regard however, the latter has turned hostile



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during the course of his testimony and had not supported the case of the prosecution. Similarly, PW-17 who was part of the raiding party also did not support the case of the prosecution in this regard. Nothing was placed on record to show that the sofa set had come from the shop of the complainant/PW-9. The complainant/PW-9 himself, as noted hereinbefore, has not supported the case of the prosecution. The other corroborative evidence, which was relied upon by the prosecution was a tape-recorded conversation in which such a transaction had been discussed. Those conversations, in view of the discussion hereinabove, cannot be relied upon, and therefore, there is no admissible evidence on record to show that the sofa set found during the house search of A-1 was the same sofa set which was alleged to be sent by the complainant/PW-9. In fact, A-1 has examined D1W8 (his wife), D1W2 (Rohit Saini-his neighbour) as defence witnesses to establish that the sofa set had been in his house much prior in time and was a gift which his wife had received in their marriage from her brother.

29. Another evidence which has been sought to be proved by the prosecution against A-1 for proving the alleged demand of illegal gratification is the latter's personal police diary (Ex. PW-20/1) which was seized in a raid conducted by CBI team on 31.10.2005 at police station Bhajan Pura. It is the case of learned SPP for the CBI that a raid was conducted in the room of A-1 in the PS Bhajan Pura by the CBI team and a case diary pertaining to the case FIR No. 425/05 was recovered from the said room in the presence of the SHO, Ombir Singh (PW-13). It was submitted that the hand writing expert has opined that the specimen sample of the A-1 and the writing in the diary had matched. The reliance on this diary has



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been placed in order to corroborate the evidence of demand of illegal gratification made by A-1.

30. To disprove the recovery of the said personal diary, A-1 has examined HC Puran Lal (D1W1), who was a summoned witness, and had brought the record consisting of RTI application dated 18.11.2010 (Ex. D1W1/DA) filed by A-1 seeking the details of the raid, if any, conducted by the CBI team at PS Bhajan Pura on 30.10.2005. In response to the said RTI application of A-1, a letter dated 03.12.2010 (Ex. D1W1/DB) was issued by Public Information Officer-cum-Addl. Deputy Commissioner of Police, North-East Distt., Delhi whereby, it was informed that no raid was conducted by CBI/ACB at PS Bhajan Pura on 30.10.2005, as per *roznamcha*, as there is no entry in *roznamcha*. Therefore, in view of the testimony of D1W1 and the documents brought on record by way of his testimony, the recovery of personal police diary (Ex. PW-20/1) is doubtful and cannot be relied upon. In any case, this document has been relied upon to show that A-1 had complainant/PW-9's mobile number. This circumstance, in absence of other evidence, cannot prove the charges levelled against A-1.

31. In his defence, the A-1 has stated that the entire case had been foisted against him at the instance of one Inspector Amit Vikram Bhardwaj. It has come on record that the aforesaid Amit Vikram Bhardwaj was part of the search conducted at the room belonging to A-1 in the police station Bhajan Pura. The recovery memo of the aforesaid diary being Ex.PW-20/2 has been signed by this Inspector Amit Vikram Bhardwaj. It has also come on record that TLO/PW-15, during his cross-examination recorded on 20.03.2012, has admitted the fact that



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the aforesaid Inspector Amit Vikram Bhardwaj was part of the aforesaid team sent to P.S. Bhajan Pura on 30.10.2005 but his name has not been mentioned in the handing over memo (Ex. PW-2/1). Admittedly, this Inspector Amit Vikram Bhardwaj has not been examined by the prosecution during the course of trial. It is also an admitted case of the prosecution that a team was sent by TLO/PW-15 to P.S. Bhajan Pura immediately after the proceedings culminated at the shop of PW-9. In his examination-in-chief recorded on 03.11.2011, TLO/PW-15 had stated as under: -

“After completion of proceedings at the spot, I sent Inspector C.K. Sharma, Inspector Umesh Vashisht and Inspector S.S. Bhullar to P.S. Bhajan Pura for arresting accused Ajay Bali where it was informed that accused Ajay Bali was not available was not available with the police station alongwith the jurisdictional area”.

This witness does not take name of Inspector Amit Vikram Bhardwaj. In fact, Inspector Amit Vikram Bhardwaj was never examined by the prosecution during the course of trial and despite being cited as witness, he was dropped subsequently.

32. The prosecution had sought to prove the alleged demand of illegal gratification made by A-1 through the testimonies of PW Nos. 9, 10, 11, 12, 14 who have not supported the case of the prosecution at all. Thereafter, it was sought to be proved through the testimony of PW-2, shadow witness, which has been, as discussed hereinbefore, cannot be relied upon as the same did not inspire confidence. It was, again, contended that the recovery of bribe money from A-2 corroborate the story of the prosecution and proves the demand of illegal



gratification, however, the same was not cogently proved by the prosecution by way of the evidence adduced before the learned Trial Court. In the considered opinion of this Court, the prosecution has failed to establish any link between A-1 and A-2. Similarly, the audio cassette, in absence of being played, cannot be relied upon.

33. In the totality of the facts and circumstances of the present case, the prosecution has not able to prove their case and the charges levelled against A-1 and A-2 beyond reasonable doubt, and hence, the impugned judgment of conviction dated 08.03.2013 and order on sentence dated 13.03.2013 are set aside.

34. The present appeals are allowed. Both the Appellants stand acquitted of the charges levelled against them.

35. Bail bonds stand discharged.

36. Pending applications, if any, also stand disposed of accordingly.

37. Copy of the judgment be sent to the concerned Jail Superintendent for necessary information and compliance.

38. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J.

DECEMBER 20, 2024/bsr/nk