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

Pronounced on: 19.09.2024

\+ CRL.A. 246/2005

RK GUPTA ..... Appellant

Through: Mr. Sanjay Jain, Mr. Ramesh Gupta, Sr. Advs. with Mr. Yuvraj Sharma, Advocate.

versus

STATE(THR.CBI) ..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC.

\+ CRL.A. 248/2005

SANJIV SHARMA ..... Appellant

Through: Mr. Pardeep Gupta, Mr. Parinav Gupta and Ms. Mansi Gupta, Advs.

versus

C.B.I. ..... Respondent

Through: Mr. Anurag Ahluwalia, CGSC.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present appeals have been filed by the appellants seeking to set aside the impugned judgment dated 11.03.2005 passed by the learned Special Judge in CC No. 24/1996, whereby both the appellants were held guilty of the charge under Section 120 B IPC. The

appellant/accused R.K. Gupta was further held guilty of the charge under Section 120B IPC read with Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') and Section 13(1)(d) punishable under Section 13(2) of the Act, whereas, the appellant/accused Sanjiv Sharma was held guilty of the charge under Section 7 and Section 13(1)(d) punishable under Section 13(2) of the Act. As the facts and issues in both the appeals are identical, therefore, the same are decided by this common judgment.

2. The challenge is also to an order on sentence dated 14.03.2005 whereby the appellant/R.K. Gupta was sentenced to rigorous imprisonment ('RI') for one year u/s 120B IPC and to pay fine of Rs. 15,000/- and in default of payment of fine, to undergo RI for 3 months. He was further sentenced u/s 13(2) of the Act to undergo RI for a period of 2 years and to pay fine of Rs. 25,000/- and in default of payment of fine, to undergo RI for 6 months. Likewise, appellant/Sanjiv Sharma was sentenced to undergo RI for 2 years u/s 7 of the Act and to pay fine of Rs. 15,000/- and in default thereof, to undergo RI for 3 months. He was further sentenced u/s 13(2) of the Act to undergo RI for 1 year and to pay fine of Rs. 10,000/- and in default thereof, to undergo RI for 2 months.

3. The facts of the case in brief as can be noted from the record are that during March 1995, the appellant/R.K. Gupta was working as Assistant Engineer ('AE' for short) and the other appellant/Sanjiv Sharma was working as Inspector in the Office of DESU, Zone no.2102, Gandhi Nagar, Geeta Colony, Delhi. It is alleged that the appellants R.K. Gupta and Sanjiv Sharma during the period of March-

April, 1995 entered into a criminal conspiracy with each other with the object of obtaining bribe of Rs.25,000/- from the complainant/Subhash Chand in consideration of issuance of power connection at his business premises viz. *'M/s. Jeet Auto Industries'*, X-888 Chand Mohalla, Gandhi Nagar, Delhi (hereinafter referred to as 'premises'). In pursuance of the said criminal conspiracy, on 05.04.1995 the appellant/R.K. Gupta demanded bribe from the complainant and directed him to contact appellant/Sanjiv Sharma for settling the amount of bribe. Accordingly, the complainant met the appellant/Sanjiv Sharma on the same day, who demanded Rs. 25,000/- from the complainant but agreed to accept Rs. 3000/- as first installment.

4. As per the case of prosecution, the complainant had applied for sanction of 10 HP Connection at his premises. He had completed all the formalities as required by DESU and had deposited all the charges. The related file was sent by the Commercial Branch to the appellant/R.K. Gupta, AE working in Zone no. 2102, on 21.3.1995 for installation of load as per letter no.236999 dated 20.3.1995.The said appellant had marked the same to the appellant/Sanjiv Sharma, Inspector of the area concerned, for further action. Thereafter, on 05.04.1995 the complainant met the appellant/R.K.Gupta inquiring about the progress in his work, but the appellant first directed him to meet appellant/Sanjiv Sharma to settle the amount of bribe for getting the work done.

5. The complainant was not willing to pay bribe, therefore, on 07.04.1995 he went straight to CBI office and made a complaint Ex.PW2/C. The said complaint was accordingly marked by SP, CBI to Sh. SK Peshin, DSP (PW-7), who joined Ram Gopal (PW-5) and H.S.

Saroha (PW-4) (both officials of NBCC) as independent witnesses for laying the trap. Thus, 100 GC Notes amounting to Rs. 3,000/- were provided by the complainant. Usual preparations for the trap were made by recording the numbers of the GC notes, treating the GC notes with Phenolphthalein Powder, giving demonstration before the witnesses about the effect of Phenolphthalein in the solution of Sodium Carbonate and giving necessary instructions to the complainant and witnesses.

6. The trap team accordingly reached the DESU Office. The complainant and shadow witness Ram Gopal (PW-5) were directed to go inside the office, while other members took suitable positions. After few minutes, the complainant and shadow witness came out of the DESU Office building and informed Sh. SK Peshin/PW-7 that the appellant/R.K. Gupta who was present inside the building had asked about the money and told them to wait for appellant/Sanjiv Sharma, who was to return within 15 minutes

7. Thereafter, the complainant met appellant/Sanjiv Sharma along with shadow witness/Ram Gopal (PW-5) after crossing the road outside the DESU office and had a conversation during which the appellant/Sanjiv Sharma extended his right hand towards the complainant and after accepting the GC notes kept the same in the outer right-side pocket of the jeans worn by him, whereupon PW-5 gave a signal to the trap team and the appellant/Sanjiv Sharma was apprehended. The shadow witness confirmed the demand and acceptance by appellant/Sanjiv Sharma. The appellant/Sanjiv Sharma voluntarily admitted having accepted the bribe amount on the directions

of the appellant/R.K. Gupta. He also identified appellant/R.K. Gupta in the office, who was then apprehended by the trap team.

8. On the directions of Sh. SK Peshin/PW-7, the independent witnesses recovered 30 GC notes, each note of Rs.100/- denomination, from the pocket of the jeans of appellant/Sanjiv Sharma. The numbers on the GC notes were also tallied and matched with the handing over memo where the numbers of GC notes were recorded. The right hand of the appellant/Sanjiv Sharma was also dipped in the colourless solution of Sodium Carbonate, which turned pink. The right front pocket of the jeans worn by the accused Sanjiv Sharma was also washed in another freshly prepared solution of Sodium Carbonate, the same also turned pink. Thereafter, search of the table of the appellant R.K. Gupta, was also conducted and papers relating to M/s Jeet Auto Industries were seized *vide* another memo. The expert opinion from CFSL regarding presence of Phenolphthalein and Sodium Carbonate in the hand wash and pocket wash of the jeans was also obtained.

9. Consequently, a chargesheet was filed after obtaining sanction from the General Manager/PW-1. Charges as mentioned in paragraph 1 above were framed against both the appellants.

10. To prove its case, the prosecution examined 8 witnesses and the appellants examined 9 defence witnesses. After considering the evidence of the witnesses, the learned Special Judge convicted and sentenced the appellants.

11. Feeling aggrieved by the impugned judgment of conviction and order on sentence, the present appeals have been preferred by the appellants.

CRL.A. 246/2005 (by the appellant/R.K. Gupta)

12. It is the case of the appellant/R.K. Gupta and so contended by the learned senior counsel appearing on behalf of the appellant that the appellant has been convicted of three charges solely on the basis of circumstantial evidence. He submits that the charges framed against the appellant are not specific as the attributions of the charges pertain only to the alleged incident of 05.04.1995 and there is no attribution of any specific role assigned to the appellant as regards the date of incident i.e. 07.04.1995 on which the trap was laid and the alleged bribe was stated to be handed over to the appellant / Sanjiv Sharma. He adds that in the absence of any charges framed against the appellant, implicating him in the incident of 07.04.1995, particularly with regard to the following conversation alleged to have been taken place between the complainant/Subhash Chand and the appellant/R.K. Gupta on 07.04.1995, neither the charges could have been pressed against the appellant nor the same could have been proved:

> *R K Gupta- Rupee ka intzaam huya*
> ***Subhash Chand**- Pure pachees hazar (Rs. 25,000), ka intzaam hua hai. Inspector sahaab kahan hai?*
> ***R K Gupta**- Inspector sahab kahi bahar gaye hai 10-15 minute mein aa jayengae.*
> ***Subash Chand**- Intzaar karta hoon*

13. He submits that the aforesaid alleged conversation between the complainant and the appellant cannot be construed as an offence under section 7 of the Act read with section 120 B IPC as the prosecution evidence does not establish any criminal conspiracy between the appellant and co-accused Sanjiv Sharma against the complainant.

14. He submits that the complainant is an interested witness because the appellants were part of the enforcement team, which had raided his factory on the allegation of electricity theft and that the complainant was harbouring animosity against the appellants for the said reason. He submits that this fact is further fortified by the timing of the FIR lodged on 07.04.1995, which is less than four weeks from the date of the raid 10.03.1995 in which the appellants had participated. Therefore, the testimony of complainant lacks credibility and does not inspire confidence nor it is corroborated by any independent witness. He relies upon the decisions in ***Mukut Bihari vs. State of Rajasthan, (2012) 11 SCC 642*** and ***Jaswant Singh vs. State of Punjab, (1973) 3 SCC 657***.

15. He submits there is also a contradiction in the statement of the complainant (PW-2) as regards his visit to the office of CBI. The case of the prosecution is that the complainant went to the office of CBI on 07.04.1995, however, in his cross-examination he (PW-2) has stated that he met SP, CBI on 05.04.1995.

16. He further submits that PW-5, one of the two *panch* witnesses, who is said to have accompanied the complainant during the raid has deposed that he was walking along with the complainant and that no conversation as reproduced in para 12 above took place between the complainant and appellant / R.K. Gupta. In fact, he did not even name the appellant. Thus, the only interaction between the appellant/R.K. Gupta and the complainant on 07.04.1995, which has been made basis for implicating the appellant, was denied by PW-5.

17. He submits that the prosecution in the present case has attempted to charge the appellant in a case of *obtainment* under Section 13(1)(d)

of the Act, without proving by way of any direct or circumstantial evidence that demand and acceptance were made by the appellant/R.K. Gupta.

18. Insofar as presumption drawn by the learned Special Judge under section 20 of the Act is concerned, he submits that the said presumption was drawn against appellant/Sanjiv Sharma on the basis of his contention that the currency notes were shoved into his pocket by the complainant and that he had neither demanded nor accepted the same. Thus, the presumption would not apply on the appellant/R.K. Gupta. He submits that anyhow, as per the ratio laid down by the Hon'ble Supreme Court in ***Neeraj Dutta vs. State (NCT of Delhi), (2023) 4 SCC 731***, it is clear that section 20 of the Act does not apply to Section 13(1)(d)(i) and (ii) of the Act.

19. He submits that the prosecution is duty bound to prove the foundational facts beyond reasonable doubt, however, in the present case the foundational facts of demand, acceptance and recovery have not been proved as far as the case of the appellant/R.K. Gupta is concerned. He further submits that demand of illegal gratification is *sine qua non* to constitute the offence under Section 7 and 13(1)(d)(i) & (ii) of the Act and mere recovery of currency notes cannot constitute the said offence. He places reliance on the decisions in – (i) ***B. Jayraj vs. State of Andhra Pradesh: (2014) 13 SCC 55;*** (ii) ***P. Satyanarayana Murthy vs. District Inspector of Police***, ***State of Andhra Pradesh & Anr.: (2015) 10 SCC 152***.

20. In the backdrop of his above submissions, the learned Senior Counsel urges the court to set aside the conviction *qua* the appellant/R.K. Gupta.

CRL.A. 248/2005 (by appellant/Sanjiv Sharma)

21. The learned counsel appearing on behalf of the appellant/Sanjiv Sharma submits that CBI raid was conducted with mala fide intention in connivance with the complainant to prevent the appellants from performing their statutory duty as officers of the DESU.

22. He substantiates his submission by contending that connivance of CBI officials with the complainant can be gathered from the following facts:

a) DW-6 i.e., the joint director of CBI, has deposed before the trial court that on 06.01.1995, he had made a complaint against M/s Jeet Auto Industries (factory of the complainant) regarding stealing of power directly from the pole. The said complaint was referred to A.E. (Enforcement) by DESU Vigilance department and accordingly, the raid was conducted by a team comprising of appellants, on the premises of the complainant on 10.03.1995. Accordingly, a joint inspection report was prepared with the signatures of the appellants and the premises of the complainant was kept under surveillance;

b) The integrity of PW-7 / DSP, CBI, who conducted the raid on the complaint of the complainant has been proved to be under cloud by DW-8 / correspondent of Rashtriya Sahara Newspaper, who has deposed as to the news items reported in the said newspaper against PW-7, as Ex.DW-8/A, Ex.DW-8/B and Ex.DW-8/C are his reports;

c) The appellants could not have made any demand of bribe either on 05.04.1995 or 07.04.1995, as the clearance for installation of power connection at the premises of the complainant was given by the DESU, Enforcement Department only on 18.04.1995. Thus, the role of the appellants could have only come into picture after clearance being given by the Enforcement Department, as before that, the premises of the complainant was put under surveillance. Prior thereto, there was no occasion for the appellants to demand any bribe. Hence, it was the mala fide intention of the complainant to make false complaint as his premises was put under surveillance by the appellants.

23. He further submits that the present case is the case of no evidence for the following reasons:

a. The demand by the appellant has not been proved by the prosecution as none of the prosecution witnesses have deposed about the foundational fact that bribe was ever demanded by the appellant on 07.04.1995;

b. PW-4 was declared hostile and did not support the case of the prosecution;

c. The complainant did not make any complaint on 05.04.1995, when it has been alleged that the demand for the bribe was first made by the appellant / R.K. Gupta but the complaint was made only in the morning of 07.04.1995;

d. PW-5, the shadow witness has deposed that he was not in a position to hear the conversation between the complainant and the appellant on 07.04.1995;

e. DW-3, who was present at the place of incident on 07.04.1995, has proved the defence of the appellant / Sanjiv Sharma that the person who was accompanying appellant / Sanjiv Sharma was offering the said appellant to take money for giving it to appellant / R.K. Gupta but when appellant / Sanjiv Sharma refused, he drew a bundle of currency notes from his pocket and thrust it into the front pocket of jeans of appellant / Sanjiv Sharma.

f. It is the case of the complainant that the appellant had accepted bribe in his right hand, however, as per complainant's own statement under Section 161 CrPC, he has stated that as per PW-5, the appellant had accepted bribe in his left hand;

24. Accordingly, it was urged that the appellant / Sanjiv Kumar is entitled to be acquitted.

BRIEF SUBMISSIONS ON BEHLAF OF THE RESPONDENT / CBI

25. *Per contra*, learned SPP for CBI makes the following submissions:

a. The testimony of PW-5 and PW-7 is sufficient to corroborate the testimony of complainant with respect to the allegation that the appellant had accepted the bribe money from the complainant;

b. The testimony of PW-5 can be relied upon despite being declared as a hostile witness as it is settled law that testimony of a hostile witness can be relied upon to the extent it supports the prosecution's version;

c. The learned special judge has rightly drawn a presumption against the appellants under Section 20 of the Act as the only condition for drawing a legal presumption under Section 20 is that during trail it should be proved that the accused has accepted or agreed to accept any illegal gratification. Such presumption can be raised even without direct evidence;

d. The contention raised by the appellant with respect to sanction to prosecute the appellants being granted illegally is devoid of any merits as the appellant / R.K. Gupta was serving as an AE and thus, the General Manager, DESU was the right authority, competent to accord the sanction; and

e. As charges have been proved against the appellants beyond reasonable doubt, the present appeals are liable to be dismissed; and

26. He places reliance on the decisions in (i) ***M. Narasinga Rao vs. State of Andhra Pradesh, (2001) 1 SCC 691,***(ii) ***T. Shankar Prasad vs. State of Andhra Pradesh, (2004) 3 SCC 753,*** (iii) ***Koli Lakhmanbhai Chanabhai vs. State of Gujarat, (1999) 8 SCC 624,*** (iv) ***Attar Singh vs. State of Maharashtra, (2013) 11 SCC 719;*** and (v) ***Devraj vs. State of Chhattisgarh, (2016) 13 SCC 366.***

FINDINGS

27. I have heard the learned counsel for the appellants as well as learned SPP for the respondent/CBI and have perused the evidence and other material on record.

28. The appellants have been held guilty of the charge under Section 7 and Section 13(1)(d) punishable under Section 13(2) of the Act, besides the charge under Section 120B IPC.

29. To be noted at the outset that proof of demand and acceptance of illegal gratification by the public servant as a fact in issue is a *sine qua non* in order to make out an offence under Section 7 and Section 13(1)(d) of the Act. In other words, to establish guilt of an accused public servant, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d) of the Act. Reference in this regard may be had to the decision of the Hon'ble Supreme Court in ***Neeraj Dutta*** (supra), the relevant part of which reads as under:

> ***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.

XXXX XXXX XXXX

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.

(emphasis supplied)

30. Clearly, 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 in issue. The said fact can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence or by circumstantial evidence in the absence of direct, oral and documentary evidence. 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) of the Act.

31. The prosecution in the present case has examined the complainant/Subhash Chand as PW-2 in order to establish the foundational fact of demand and acceptance made by the appellants; Sh. H.S. Saroha has been examined as PW-4 to prove the recovery of bribe money and Sh. Ram Gopal was examined as PW-5 (shadow witness) to prove and corroborate the fact of demand and acceptance.

32. A perusal of the testimony of PW-4 shows that he remained in the vehicle with CBI official, S.K. Peshin (PW-7), while PW-5/Ram

Gopal was sent along with the complainant to meet the appellants. It is clear from the testimony of PW-4 that he did not support the case of the prosecution and feigned ignorance as regard the pre-raid proceedings and various other events during the raid. He was, therefore, declared hostile and cross-examined by the learned Public Prosecutor. During cross-examination, he supported the case of the prosecution only to the extent of recovery having been made of 30 GC notes of Rs.100 denomination each, from the right pocket of the jeans of the appellant/Sanjiv Sharma. The relevant part of the testimony of PW-4 reads as under:

Examination in chief of PW-4

"About 3 or 4 years back, I visited CBI Office alongwith Shri Ram Gopal, Office Assistant, on the directions of my senior officer Shri R.C.Verma. There we reported to Shri S.K. Peshin, DSP before lunch hours. I am not sure of the time. Probably we reached there between 11.00 AM to 12.00 Noon. Complainant was already present there. I do not remember his name. I do not remember, whether or not his complaint was shown to me. I did not talk to complainant regarding the allegations in his complaint. 30 GC notes of Rs. 100/- denomination each were used for the trap. I do not remember who produced those GC notes. Numbers of these GC notes were written on paper. I do not remember whether those numbers were written in my presence or those were written before my arrival in the CBI office. Said GC notes were treated with chemical powder. I do not remember its name. One demonstration regarding the reaction of said powder was given. For that purpose a solution was prepared, but I do not remember other details of the demonstration."

Cross examination by the prosecution

"I do not remember, therefore, I cannot admit or deny that 30 GC notes of Rs. 100 denomination each were produced by

Subhash Chand and their numbers were recorded in my presence in the annexure-A.

xxxx xxxx xxxx xxxx

It is correct that we reached there at 12.30 P.M. Vehicles at a distance of 50 yards from DESU Office. From there, complainant and Ram Gopal were sent to contact the accused. Myself and S.K. Peshin remained sitting in vehicle and other members of trap party got down from the vehicle and started roaming around. It is incorrect to suggest that I took position across the road with Inspector A.G.L. Kaul. 15 – 20 minutes later, Ram Gopal gave pre-appointed signal by putting his hand on his head and on this we rushed to the spot and two inspectors of CBI apprehended accused Sanjiv Sharma present in the court outside DESU Office near one shop. Accused was apprehended from his arms which pulled back.

xxxx xxxx xxxx xxxx

In the room of R.K. Gupta, I was directed to take the search of Sanjiv Sharma. On search, I recovered aforesaid 30 G.C. notes of Rs. 100/- denomination each from the right pocket of the pant of the accused. Thereafter, myself and C.B.I. officers checked the numbers of recovered G.C. notes and compared them with the numbers noted down in the annexures EX.P.W.2/E and G.C. notes were found to be the same.

xxxx xxxx xxxx xxxx

I do not remember therefore, I cannot admit or deny that accused Sanjiv Sharma did not tell Shri S.K. Peshin, DSP that he has accepted tainted Rs. 3000/- from the complainant on the directions of accused R.K. Gupta. I do not remember what was said by complainant to S.K. Peshin, therefore, I cannot admit or deny if on the challenge by DSP S.K. Peshin, accused Sanjiv Sharma told that complainant had asked him to take Rs. 3000/- for delivery to R.K. Gupta, which he refused to do.

xxxx xxxx xxxx xxxx

I do not remember whether or not I stated in my statement to C.B.I. that accused Sanjiv Sharma on the challenge of Sh. S.K.

Peshin, DSP responded that the said money was accepted by him on the directions of Shri R.K. Gupta who was available in his office."

33. Insofar as role of PW-5 is concerned, he was joined in the raiding party and was specifically ordered to go along with the complainant on 07.04.1995 and hear the conversation between the complainant and the appellants and also to see the transaction of acceptance of bribe by the accused/appellants. The relevant part of the testimony of PW-5 reads as under:-

<u>Examination in chief of PW-5</u>

"I was directed to remain with the complainant with a view to hear the conversation and watch the transaction. I also directed that in the event of acceptance of bribe by the accused I should signal to the trap party by placing both my hands on my head.

xxxx xxxx xxxx xxxx

After getting down from the vehicle myself and the complainant were sent to contact the accused in his office. Other members of the trap team took position on a side outside the DESU. ***We met some DESU employees and the complainant enquired about the whereabouts of the concerned Inspector from them.*** *I do not remember the name of said Inspector of DESU about whom the complainant had asked.* ***Those DESU employees informed that the said Inspector had gone out and we should come after some time. No other conversation took place with said DESU employees."***

<u>Cross examination of PW-5 by prosecution</u>

"It is wrong to suggest that when after getting down from the vehicle, and proceeding towards the office of the accused, we reached at the entrance gate of DESU office, where we met accused R.K. Gupta. *(Witness is confronted with portion C to*

C of his statement Ex.P.W.5/A witness states that he does not remember whether he made such statement to C.B.I.). ***I do not remember, therefore, I cannot admit or deny if following conversation took place between R.K. Gupta and the Subhash Chand:-***

> ***R K Gupta- Rupaye ka intzaam huha.***
> ***Subhash Chand- Pure pachees hazar (Rs. 25,000), ka intzaam hua hai. Inspector Saheb kahan hai?***
> ***R K Gupta- Abhi bahar gaye hain pandrah minute meing aa rahein hai.***
> ***Subash Chand- Acha main unka intazaar karoonga.***

(witness is confronted with partition D to D of his statement Ex.PW5/A where is so recorded and he states that he does not remember whether he made such statements to CBI). I do not remember, therefore I cannot admit or deny if after the said conversation myself and complainant came out from the office and informed Insp. Shri S.K. Peshin, DSP that Shri R.K. Gupta, Assistant Engineer has told us that accused Sanjiv Sharma was not present in his office and he is likely to come within 15 minutes.

xxxx xxxx xxxx xxxx

I do not remember what conversation took between them. I do not remember, therefore, I cannot admit or deny if we started walking alongwith accused Sanjiv Sharma towards the main road and while walking following conversation took place:

> *Subhash Chand:- Sahab aapka intazar kar raha tha. Gupta sahib ne kaha 15 minute tak aa rahen hai.*
>
> *Sanjeev Sharma:- Ha main bahar gaya tha. Rupaye laye ho.*
>
> *Subhash Chand:- Sahab 3000/- rupaye laya hun.*
>
> *Sannjeev Sharam:- Ise kuch nahin baneja. Pure 25000/- dene honge.*
>
> *Subhash Chand:- Mera kaam kab ho jayega.*

Sanjeev Sharma:- Iski phikar na karo.

(witness is confronted with portion F to F of statement Ex.P.W.5/A where it is so recorded. He denies having made such statement to C.B.I.). I do not remember if after crossing the road and reaching at the other end of the main road, accused Sanjeev Sharma said to the complainant "Rupaye de do". (Vol.) However, I saw him extending his hand.

xxxx xxxx xxxx xxxx

It is wrong to suggest that on this accused Sanjeev Sharma said that he had accepted the money from the complainant on the directions of Shri R.K. Gupta, accused who was available in his office.

xxxx xxxx xxxx xxxx

I do not remember, therefore, I cannot admit or deny that when CBI team reached near the DESU Office, accuse Sanjiv Sharma pointed towards accused R.K. Gupta present in court, who was trying to escape.

xxxx xxxx xxxx xxxx

It is incorrect to suggest that I have desposed falsely and given a distorted version in order to save the accused. It is correct that office table of accused R.K. Gupta was searched and a bunch of papers were recovered and seized. I cannot admit or deny if those papers related to electricity connection of Subhash Chand."

(emphasis supplied)

34. Evidently, PW-5 has supported the case of the prosecution only to the extent that complainant took out money from the pocket of his pant and extended the same towards the appellant/Sanjiv Sharma, who after accepting the money in his right hand kept it in the right front pocket of his jeans and thereafter, he gave signal to the CBI by putting both hands on his head.

35. PW-5 has not at all stated that on the said date when he

accompanied the complainant/PW-2, they had met the appellant/R.K. Gupta. On the contrary, he has stated that when he along with the complainant were sent to contact the appellant / R.K. Gupta in his office, they met some DESU employees and the complainant enquired from them about the whereabouts of the concerned Inspector and the said DESU employees informed that the Inspector had gone out and that they should come after some time. According to PW-5 no other conversation took place with the said DESU employees.

36. Conspicuously, PW-5 has not stated having met appellant/R.K. Gupta and the said appellant having directed them to go and meet appellant/Sanjiv Sharma, rather the said witness has denied the suggestion of having met R.K. Gupta on 07.04.1995. He stated that he does not remember that any suggested conversation took place between the complainant and appellant/R.K. Gupta.

37. He also stated that the appellant/Sanjiv Sharma and complainant were talking while walking towards main road but he does not remember what conversation took between them. He also feigned complete ignorance about the suggested conversation having taken place between the complainant and appellant/Sanjiv Sharma with regard to demand of bribe money. Thus, there is nothing in the testimony of PW-5 wherefrom it could be discerned that the appellants had demanded bribe from the complainant on the date when the raid was conducted i.e. 07.04.1995.

38. Upon exclusion of testimonies of PW-4 and PW-5, the only piece of evidence which is available to prove the foundational fact of demand having originated from the appellants, either on the date of raid i.e.

07.04.1995 or on 05.04.1995, is the statement of complainant/PW-2. Since lot turns on the testimony of complainant/PW-2, apposite would it be to reproduce the relevant excerpts from the complainant's statement, which reads as under:

<u>Examination in Chief of PW-2</u>

"I contacted R.K. Gupta Assistant Engineer in respect of my aforesaid application for power connection. Said R.K. Gupta accused present in Court. (Correctly identified) R.K. Gupta advised me to contact Inspector Sanjiv Sharma, accused present in the Court (correctly identified in order to settle the amount of bribe to be paid for getting the power connection. Thereafter, I met accused Sanjiv Sharma who demanded a sum of Rs.25,000/- for doing the work. I showed my inability to immediately pay Rs.25,000/-. On this, accd. Sanjiv Sharma directed me to at least pay first instalment of Rs.3,000/-, so that action on my application may be taken. Remaining amount was to be paid after the work. Sanjiv Kumar told me to pay that amount of Rs.3,000/- on 7-4-1995. ***After giving a thought to the unreasonable demand I went to CBI office on 7-4-1995 at about 9-30 AM. There I met S.P. Anti-corruption and narrated the matter to him S.P. Anti-corruption also interrogated me regarding the facts. I submitted my written complaint Ex.PW2/C to the S.P. CBI.***

xxx xxx xxx xxx

From there, I and witness Ram Gopal proceeded towards DESU office and we met accused R.K. Gupta present in the court just outside the gate of DESU office. He was sitting on a two-wheeler scooter.

Accused R.K. Gupta asked, "RUPEE KA INTZAM HUA HE"? I replied, "POORE PACHHIS HAZAAR RUPEY KA INTEZAM HUA HE INSPECTOR SAHIB KAHAN HEN.

xxx xxx xxx xxx

10/15 minutes later Inspector Sanjiv Sharma came and I met him near the gate. I said, MAIN AAP KI INTZAR KAR RAHA THA, GUPTA SAHIB NEN KAHA THA APP BAHAR GAIN HAIN. To this, accused Sanjiv Sharma replied. HAAN MAIN BAHAR GAYA THA, RUPEE LAYE HO. I replied. TIN HAZAR RUPEE LAYA HOON. On this accused Sanjiv Sharma said POORE HI DAINEN HON GEY. Then I asked MAIRA KAAM TO KAR DO GE. On this, ACCUSED SANJIV SHARMA SAID, "FIKAR MAT KARO". While having this conversation, we crossed the road. After crossing the road, Sanjiv Sharma, told me to give money to him. On this, I took tainted Rs. 3,000/- from my pocket and gave it to the accused Sanjiv Sharma. Sanjiv Sharma accepted the money in his right hand and kept it in right pocket of his jean. As soon as accd. Sanjiv Sharma, accepted the money, witness Ram Gopal gave the signal to CBI officials."

<u>Cross Examination of PW-2</u>

"I do not know if anyone had reported against my drawing of electricity from the said three phase connection of my uncle. It is correct that on 10-3-95 enforcement department of DESU had raided my factory.

xxx xxx xxx xxx

Aforesaid enforcement team comprised of both the accused persons present in the court and 2 or 3 other officials. *I do not remember for how much time they remained at my factory on 10-3-95. However, I was present in the factory during said period. My machines or the load was not checked by the enforcement team.* ***Enforcement team has told me that there was a complaint of power theft against me.***

xxx xxx xxx xxx

I submitted my application for three phase connection in commercial branch of DESU at Krishna Nagar Office.
I have no idea, therefore, I cannot admit or deny that both the

accused persons had no connection with the aforesaid commercial branch of DESU. I had deposited requisite fee as demanded by aforesaid office.

xxx xxx xxx xxx

I had met SP. CBI/ACB on 5-4-94. I do not remember if I met him on 7-4-95. I did not submit my complaint to S.P. CBI/ACB on 5-4-95. *I do not remember if my entry in the visitor register was made either on 5-4-95 or 7-4-95. On 5-4-95 I met only SP CBI and no other CBI official. I do not remember the name of aforesaid SP, C.B.I.*

xxx xxx xxx xxx

I do not remember the description of SP, CBI/ACB, whom I had met.

xxx xxx xxx xxx

It is correct that RK Gupta was member of the raid party, which had come from Enforcement Department. It is incorrect to suggest that I got accused RK Gupta involved in this case to get rid of legal action at the instance of DESU in the court of law.

I do not remember the time at which I met accused RK Gupta on 5-4-95. I do not remember whether or not, anyone accompanied me to RK Gupta on 5-4-95. I do not remember if anyone was present in the room of R.K.Gupta when I met him there on 5-4-95."

(emphasis supplied)

39. Before examining the testimony of the complainant / PW-2, it is imperative to note that one of the defences set up by the appellants is that they have been falsely implicated by the complainant as the appellants were part of the enforcement team which raided the premises of the complainant on a complaint being made regarding electricity

theft against the complainant from three phase electricity connection from the adjoining factory of his uncle Ram Kishan.

40. The factum of raid by the enforcement team on 10.03.1995 i.e. about four weeks prior to the incident, has been admitted by the complainant in his cross-examination. The complainant has further admitted that the enforcement team comprised of both the appellants present in the Court and 2-3 other officials. He has also admitted that enforcement team had informed him that there was a complaint of power theft against him. During cross-examination of complainant / PW-2 a suggestion has also been put to him on behalf of the appellant/R.K. Gupta that the complainant has got him involved in the case to get rid of any legal action which DESU might have taken against the complainant in the court of law.

41. Pertinently, the appellants in their defence had examined Sh. R.K. Malhotra, the then Assistant Engineer (Enforcement) as DW-4, who has stated that a complaint was received by him that M/s Jeet Auto Industries of Mohalla Gandhi Nagar, the partnership firm of complainant was stealing electricity in March, 1995. Consequently, he had formed a raid party of his officials and reached the Zonal Office on 10.03.1995. He was also joined by appellant/R.K. Gupta (AE) and appellant/Sanjiv Sharma (Inspector) and went to the premises of M/s Jeet Auto Industries. The said witness also proved the joint inspection report of the premises of M/s Jeet Auto Industries.

42. A joint director of CBI was also examined as DW-6 by the appellants who deposed that on 06.01.1995, he had made a complaint against M/s Jeet Auto Industries (factory of the complainant) regarding

stealing of power directly from the pole. He had also deposed that he had sent a letter to Director (Vig.) DESU, Rajghat Power House, Delhi for taking necessary action.

43. Now coming to the testimony of complainant/PW-2, he has testified having met R.K. Gupta on 05.04.1995 and the latter having directed him to meet appellant/Sanjiv Sharma to settle the bribe amount to be paid for getting the work done. He then met appellant/Sanjiv Sharma on 05.04.1995, who demanded an amount of Rs.25,000/- for doing the work, however, on the request of the complainant he asked the complainant to pay at least Rs.3,000/- as first installment of bribe amount. Incidentally, in his cross-examination he has failed to specify and feigned ignorance as to the time at which he allegedly met the appellant/R.K. Gupta on 05.04.1995; whether anybody accompanied him during the said visit; whether anyone else was present in the room where he allegedly met the appellant/R.K.Gupta. Thus, the complainant (PW-2), who has failed to give the graphic details of an alleged meeting with appellants or is not able to remember the relevant details, cannot be believed without corroboration, particularly given the backdrop that appellants were part of the enforcement team which raided his factory premises on the basis of complaint of electricity theft and the possibility of complainant acting with oblique motive in order to falsely implicate the appellants cannot be ruled out.

44. Further, in his cross-examination, the complainant/PW-2 has stated that even on 05.04.1995 i.e., when he had met the appellants for the first time, he had also met SP, CBI, ACB but admittedly, he did not submit any complaint to him. He has stated that he did not even know

the name of said SP, CBI nor he remembers his description. Intriguingly, when the complainant had met a senior CBI official on 05.04.1995, it is not understandable as to why he did not make any complaint to the CBI on the said date nor any justification in that behalf is forthcoming. This also raises doubt about truthfulness of complainant's testimony with regard to the incident of 05.04.1995.

45. As regards the incident of 07.04.1995, there is material contradiction in the statements of complaint/PW-2 and shadow witness/PW-5.As per the complainant/PW-2, he had met appellant/R.K. Gupta on 07.04.1995, who was sitting on his two- wheeler scooter outside the gate of DESU Office, whereas PW-5 has stated that they had met DESU employees who told them that concerned Inspector would be coming within 10-15 minutes. As noted above, PW-5 does not refer to any meeting with appellant/R.K. Gupta on the said date when he had accompanied the complainant. This contradiction as to the complainant/PW-2 meeting appellant/R.K. Gupta on 07.04.1995 and there being a demand by the appellants on the said date, raises considerable doubt about truthfulness of prosecution version and the veracity of evidence of complainant/PW-2.

46. Even otherwise, the complainant/PW-2 being an interested witness who could be inimical towards the appellants, it will not be safe to base the conviction of the appellants on the sole testimony of the complainant, in the absence of any corroboration from the independent witness[1], which in the present case is not available, in so far as the

[1] 2022 SCC OnLine SC 1107 : Rajesh Gupta v. State through CBI

foundational fact of demand is concerned.

47. Thus, the prosecution has failed to discharge its burden to establish beyond reasonable doubt that the appellants demanded illegal gratification. On the other hand, the possibility of false implication of appellants cannot be ruled out given the timing of complaint by the complainant against the appellants being within a period of one month of the raid on the factory premises of the complainant by the Enforcement team of DESU which comprised of appellants as well. Therefore, the appellants on the touchstone of preponderance of probability have succeeded to probabilize their defence.

48. The learned Trial Court has observed that there is sufficient circumstantial evidence to support the testimony of the complainant insofar as demand is concerned. The circumstances which, according to the learned Trial Court, corroborates the evidence of the complainant are that – (i) the complainant went to the CBI office and made a complaint in writing naming both the appellants and clearly stating the facts, and (ii) he gave Rs. 3,000/- for laying the trap and went through the entire procedure for getting the appellants trapped. For proving a case on basis of circumstantial evidence, it must be established that the chain of circumstances is complete and consistent with the only conclusion of guilt. This Court is of the view that the aforesaid circumstances do not corroborate the demand but only refers to the pre-trap proceedings, therefore, no inference of demand having been made by the appellants can be drawn from them.

49. In so far as the recovery of alleged bribe money is concerned, to be noted that there is no recovery from the appellant/R.K. Gupta. The

third charge against the appellant/R.K. Gupta only pertains to recovery. Incidentally, the third charge does not mention the date but alludes to the incident of 07.04.1995 (first two charges refer to the incident of 05.04.1995). A perusal of said charge shows that it pertains to the alleged obtainment of pecuniary advantage of Rs. 3000/- by the appellant / Sanjiv Sharma from the complainant. The said charge does not attribute either any demand or acceptance by the appellant/R.K. Gupta and the narrative of the events is confined to the appellant/Sanjiv Sharma. Also, the offence of Section 120B IPC is not added to the offence alleged under Section 13(1)(d) read with Section 13(2) of the Act, therefore, appellant/R.K. Gupta could not have been implicated in the acts attributed to appellant/Sanjiv Sharma.

50. As per prosecution version, the recovery is only from the appellant/Sanjiv Sharma. In this regard, suffice it to say that mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence is not reliable. The law is well settled that mere possession of recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7, as well as, Section 13(1)(d) of the Act. In other words, mere acceptance of any amount by way of illegal gratification or recovery thereof de hors the proof of demand, *ipso facto* would not be sufficient to bring home the charge under the said sections. The proof of demand has repeatedly been held by various pronouncements of Hon'ble Supreme Court to be an indispensable essentiality for an offence under Sections 7 and 13 of the Act. Proof of acceptance of illegal gratification could follow only if there was proof of demand. Reference in this regard may be had to the

decision of ***B. Jayaraj (surpa)***, wherein three Judges bench of the Hon'ble Supreme Court held as under:

> ***"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe.*** *The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P. [(2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and C.M. Girish Babu v. CBI [(2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1]*
>
> *xxxx xxxx xxxx*
>
> ***9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.***
>
> *10. For the aforesaid reasons, we cannot sustain the conviction of the appellant either under Section 7 or under Sections 13(1)(d)(i) and (ii) read with Section 13(2) of the Act. Accordingly, the conviction and the sentences imposed on the appellant-accused by the trial court as well as the High Court by order dated 25-4-2011 [B. Jayaraj v. State,*

Criminal Appeal No. 99 of 2005, decided on 25-4-2011 (AP)] are set aside and the appeal is allowed."

(emphasis supplied)

51. Carrying the above enunciation further, the Hon'ble Supreme Court in ***P. Satyanarayana Murthy vs. The District. Inspector Of Police, & Ors., (2015) 10 SCC 152*** (three Judges bench), exposited as under:

> *"22.* ***In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence Under Sections 7 as well as 13(1)(d)(i) & (ii) of the Act.*** *It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved.* ***The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence Under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence Under Section 7 and not to those Under Section 13(1)(d) (i) & (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.***
>
> *23.* ***The proof of demand of illegal gratification, thus, is the gravamen of the offence Under Sections 7 and 13(1)(d)(i) & (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 Sections 7 or 13 of the Act would not entail his conviction thereunder.

xxxxxx xxxxxx xxxxxx

26. ***In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in Sujit Biswas v. State of Assam (2013) 12 SCC 406 had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible*** **surmise or conjecture.** *It was held, that the Court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused."*

(emphasis supplied)

52. The reading of the above authoritative pronouncements of the Supreme Court, makes it plain that the prosecution having failed to establish any demand for bribe as alleged, no presumption under Section 20 of the Act would arise. It is also settled law that Section 20 does not apply to the offence under Section 13(1)(d) of the PC Act[2] which deals only with the aspect of "obtainment". Incidentally, in the present case the allegations are of "obtainment" and not of

[2]Khaleel Ahmed vs. State of Karnataka, (2015) 16 SCC 350 ; Neeraj Dutta (supra)

"acceptance".[3] This being the position, the decisions in ***M. Narasinga Rao (supra)*** and ***T. Shankar Prasad (supra)***, relied upon by the learned SPP for the CBI, on the aspect of drawing legal presumption under Section 20 of the Act do not advance the case of the prosecution.

53. Insofar as charge under Section 120B of IPC is concerned, intriguingly, in the impugned judgment there is no discussion with regard to the offence under Section 120B IPC. Three essential elements must be shown - a criminal object, a plan or scheme embodying means to accomplish that object, and an agreement between two or more persons to cooperate for the accomplishment of such object - to make an offence of criminal conspiracy.[4] In the present case, the charge of conspiracy under section 120B IPC cannot stand as the prosecution has failed to prove beyond reasonable doubt by way of any direct or circumstantial evidence that there was prior meeting of mind between the appellants to demand illegal gratification from the complainant. Even the charge framed against the appellants does not show any meeting of minds or arrival at any agreement of any criminal object between them.

54. The case of the prosecution is that the complainant had met the appellant/R.K. Gupta on 05.04.1995 and he was asked to meet the appellant/Sanjiv Sharma to settle the bribe amount. Thereafter, the complainant met the appellant/Sanjiv Sharma who demanded Rs.25,000/- as bribe. There is no evidence to suggest that appellant/R.K. Gupta and appellant/Sanjiv Sharma were already in

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[3] C.K. Damodaran Nair v. UOI, (1997) 9 SCC 477 ; Neeraj Dutta (supra)
[4] (2019) 10 SCC 623 : Rajender alias Rajesh alias Raju vs. State (NCT of Delhi)

communication with each other with regard to obtaining of illegal gratification from the complainant nor it is the case of the prosecution that appellant/R.K. Gupta spoke to appellant/Sanjiv Sharma in the presence of complainant. Thus, there are no circumstances to indicate the existence of the essential elements of a criminal conspiracy in the instant case.

55. Further, the charge of conspiracy is premised only on the complaint of the complainant/PW-2, who is an interested witness. As noted above the law is well-settled that the sole testimony of the complainant, who is the interested witness, cannot be relied upon without having corroboration with the independent evidence, which is completely lacking insofar as charge of conspiracy and the foundational fact of demand, is concerned.

56. The learned SPP for CBI has relied upon the decisions of the Hon'ble Supreme Court in ***Koli Lakhmanbhai Chanabhai (supra), Attar Singh (supra)*** and ***Devraj (supra),*** to contend that evidence of a hostile witness can be relied upon to the extent to which it supports the prosecution version. There is no quarrel to the said proposition of law. As noted above PW-4 and PW-5 turned hostile and did not support the case of prosecution in proving the foundational fact of demand originating from the appellants. They have supported the case of the prosecution only to the extent of recovery of currency notes from the appellant/Sanjiv Sharma. In view of the settled law, mere recovery of amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder without

prosecution proving the demand for illegal gratification. Therefore, the said decisions do not further the case of respondent/CBI.

57. On an overall conspectus of evidence on record and the position of law noted hereinabove, this Court is of the opinion that it is a case in which no cogent evidence is available to prove the guilt of appellants for the charged offences. There is no proof of demand at pre-trap or during trap. The prosecution has failed to prove the charges against the appellants beyond all reasonable doubt. Therefore, the appeals are allowed and appellants are held not guilty. Consequently, the impugned judgment dated 11.03.2005 convicting the appellants and the order on sentence dated 14.03.2005, passed by the learned Special Judge are set aside.

58. The appeals stand disposed of.

VIKAS MAHAJAN, J.

SEPTEMBER 19, 2024
N.S. ASWAL/**dss**