$~

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

% **Reserved on: December 07, 2023**
Decided on: March 22, 2024

\+ **CRL.A. 630/2015**

ARUN KUMAR GURJAR ..... Appellant

Through: Mr. Siddharth Aggarwal, Senior Advocate with Ms. Vrinda Bhandari, Ms. Soughanya Shankaran, Mr. Ayush Shrivastava, Mr. Madhav Aggarwal, Ms. Anandita Rana and Ms. P. Barsaiyan, Advocates

V

CENTRAL BURAEU OF INVESTIGATION ..... Respondent

Through: Ms. Anubha Bhardwaj, SPP for CBI with Ms. Khushal Saini, Advocate

\+ **CRL.A. 643/2015**

BALJEET SINGH ..... Appellant

Through: Mr. Vikas Pahwa, Senior Advocate with Mr. Manish Tiwari, Mr. Anil Kumar, Mr. Siddharth Singh and Ms. Sanskriti, Advocates

V

C B I ..... Respondent

Through: Ms. Anubha Bhardwaj, SPP

for CBI with Ms. Khushal Saini, Advocate

CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present appeals are filed appeal under section 374 read with 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as **"the Code"**) for setting aside the judgment dated 20.05.2015 (hereinafter referred to as "**the impugned judgment**") and order on sentence dated 21.05.2015 (hereinafter referred to as "**the impugned order**") passed by the court of Sh. Sanjeev Jain, Special Judge (PC Act)/CBI-03, South, Saket Courts, New Delhi (hereinafter referred to as "**the trial court**") in case titled as **CBI V Arun Kumar Gurjar & another** in CC no. 50/2012 arising out of RC bearing no. CBI/AC-I/RC-A0003/2010 dated 29.12.2010 registered by CBI, ACU (I), New Delhi under section 120B of the Indian Penal Code, 1860 (hereinafter referred to as the "**IPC**") read with section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "**PC Act**") and substantive offence under section 7 of the PC Act and for acquittal of the appellants.

2. The factual background of the case as appearing from charge sheet is that Pawan Aggarwal, Partner of M/s Madhya Pradesh Vanijya Company, 3958/2, Naya Bazar, Delhi (hereinafter referred to as "**the complainant**") made a written complaint on the basis of which present RC bearing no CBI/AC-I/RC-A0003/2010 was registered on 29.12.2010 by CBI, ACU(I), New Delhi under section 120B IPC read with section 7 of the PC Act and substantive offence under section 7 of PC Act against Arun Kumar Gurjar (Joint Commissioner of Income Tax, Range 29, New Delhi and hereinafter referred to as **"the appellant Arun Kumar Gurjar"**) and Baljeet Singh (Inspector, Income Tax, Range 29, New Delhi/IAP-V,CIT (Audit) I, C.R. Building, New Delhi and hereinafter referred to as **"the appellant Baljeet Singh"**).

2.1 The complainant in FIR alleged that that complainant was running a partnership firm in the name and style of M/s Madhya Pradesh Vanijaya Company (hereinafter referred to as **"MPVC"**) at 3958/2, Naya Bazar, Delhi. The Tax Assessment for the year 2008-09 pertaining to MPVC was under scrutiny and was pending in the office of the appellant Arun Kumar Gurjar, Ward no. 29, Drum

Shape Building, IP Estate, New Delhi, the then Assessing Officer. The complainant on several occasions during assessment received various notices from the department and the complainant in response to notices submitted requisite documents/information to the appellant Arun Kumar Gurjar to finalize the scrutiny. The appellant Baljeet Singh who was a subordinate officer of the appellant Arun Kumar Gurjar also remained present during the meetings.

2.2 The appellants Arun Kumar Gurjar and Baljeet Singh in the month of October, 2010 asked the complainant to discuss the case with them in the office. The complainant visited the office of the appellant Arun Kumar Gurjar where the appellant Baljeet Singh was also present. The appellants Arun Kumar Gurjar and Baljeet Singh demanded Rs.5 lakhs to finalize the scrutiny without any hurdle but the complainant refused to pay Rs.5 lakhs. The appellant Arun Kumar Gurjar on 20.12.2010 issued a notice to MPVC for submitting further information which had already been submitted by MPVC and a reply in response to said letter was sent to the appellant Arun Kumar Gurjar on 24.12.2010. The complainant again on 27.12.2010 personally visited the office of the appellant Arun Kumar Gurjar to clarify the pending issues and met the appellants Arun Kumar Gurjar and Baljeet Singh who told the complainant about many discrepancies in the papers and again demanded Rs.5 lakhs to finalize entire matter without any hurdle.

2.3 The complainant being aggrieved by the demand made by the appellant Arun Kumar Gurjar who was then Joint Commissioner of Income Tax, Range-29, New Delhi and the appellant Baljeet Singh who was then Inspector, Income Tax, New Delhi submitted a written complaint to the Superintendent of Police, CBI, ACU-I, New Delhi on 28.12.2010. The genuineness of complaint dated 28.12.2010 was verified on 29.12.2010 by Ram Singh, the then Deputy Superintendent of Police, CBI, ACU-I, New Delhi in presence of independent witnesses namely, Jitendra Bhardwaj and Hukum Chand from House Tax Department, MCD, Central Zone, New Delhi by arranging a conversation of the complainant from his Mobile bearing no. 9311067502 with the appellant Baljeet Singh on his Mobile bearing no. 9873574750. The conversation between the complainant and the appellant Baljeet Singh was recorded with the help of digital voice recorder and transferred to a CD and a verification memo was drawn by Sh. Ram Singh. The appellant Baljeet Singh in said incriminating conversation asked the complainant to come to his office in Drum Shaped Building, IP Estate, New Delhi. ACU-I branch of CBI, New Delhi registered RC AC 1 2010 A 0003 after verification of the complaint against the appellants Arun Kumar Gurjar and Baljeet Singh. Ram Singh, Deputy Superintendent of Police, CBI, ACU-I, New Delhi was detailed as the 'Trap Laying Officer' (**TLO**) and it was decided to lay a trap against the accused officials of the Income Tax Department. The complainant produced Trap money equivalent to Rs.2,00,000/- in Rs.1000 denomination. The money was kept in an envelope and Phenolphthalein Powder (hereinafter referred to as "**PP powder**") was smeared on the currency notes and envelope in presence of both independent witnesses. The necessary precautions were taken and a pre-trap memorandum (handing over memo) containing the details of entire proceedings which took place before trap was drawn in presence of the team members and was duly signed.

2.4 The complainant was equipped with a digital voice recorder with a direction by the TLO to record the conversation between him and the accused officials during the transaction of bribe money. The trap money was also handed over to the complainant. The complainant after arriving at the Drum-shaped building in New Delhi was instructed to activate his recording device and was then directed to approach the appellant Baljeet Singh. The complainant at time of moving into Drum-shaped building was accompanied by the TLO, Jitendra Bhardwaj, an independent witness and other team members. The complainant entered into room no. 207 having name plate of the appellant Arun Kumar Gurjar, Joint Commissioner of Income Tax where the appellant Baljeet Singh was waiting. The complainant was closely followed by the TLO and Jitendra Bhardwaj along with other team members also took safe position near room no. 207. The complainant came out from said the room and gave pre-decided signal by touching his shoes. One person came out from room no 207 and proceeded towards the staircase who was pointed out as the appellant Baljeet Singh by the complainant. TLO and independent witness Jitendra Bhardwaj along with their team members rushed towards the appellant Baljeet Singh and challenged him of accepting bribe from the complainant. The appellant Baljeet Singh attempted to put hand into his inner left pocket but was apprehended by TLO and other team members. The appellant Baljeet Singh was taken to room no. 207 in the presence of the independent witnesses and the complainant.

2.5 The appellant Baljeet Singh was searched by independent witness namely Jitendra Bhardwaj which led to the recovery of an envelope containing bribe money in the left inner pocket of his coat. The recovered amount was counted and the serial numbers of the currency notes amounting to Rs.2,00,000/- exactly matched with those currency notes which were mentioned in Handing Over Memo. The appellant Baljeet Singh in presence of both independent witnesses admitted accepting the bribe from the complainant under the direction of the appellant Arun Kumar Gurjar who was sitting in the office of Commissioner of Income Tax at Drum-shaped Building, New Delhi. The appellant Arun Kumar Gurjar was brought to his office where the appellant Baljeet Singh reiterated his statement in the presence of independent witnesses and members of the trap team whereby confirmed that he accepted the bribe on the directions of the appellant Arun Kumar Gurjar who could not give any explanation for the allegations made by the appellant Baljeet Singh. The appellants Arun Kumar Gurjar and Baljeet Singh were taken into custody and a recovery memo mentioning the entire post-trap proceedings was prepared and the signatures of the trap team members were obtained on the recovery memo. The recording device previously given to the complainant was taken back and the incriminating conversation between the complainant and the appellant Baljeet Singh recorded during the bribe transaction was transferred to a CD. The washes of hands and clothes of the appellant Baljeet Singh were collected and preserved for the purpose of investigation,

2.6 The chamber of the appellant Arun Kumar Gurjar at Drum-shaped Building in New Delhi before the trap team left the office was occupied by another CBI team led by Raja Chatterjee, Inspector, CBI, New Delhi along with Mr. Kamal Kapoor, Joint Commissioner of Income Tax at Drum-shaped Building, New Delhi who accompanied the team as a witness cum representative of the Income Tax Department. The office of the appellant Arun Kumar Gurjar was searched in the presence of Kamal Kapoor which resulted in the recovery of cash amount of Rs.6,00,000/- which was taken into possession and the appellant Arun Kumar Gurjar could not give satisfactory explanation about recovery of the cash found in the drawer of his office chamber. Besides recovery of Rs.2,00,000/- as bribe money and another sum of Rs.59,000/- in cash was also recovered from the inner pocket of trouser of the appellant Baljeet Singh for which he could not give any satisfactory explanation.

2.7 The appellant Arun Kumar Gurjar who was holding the position of Joint Commissioner of Income Tax (JCIT) Range-29, Drum-shaped Building, IP Estate, New Delhi commenced his service in the Income Tax Department in 1999 as an IRS officer. The appellant Arun Kumar Gurjar in July, 2010 joined as JCIT, Range-29, Drum-shaped Building, IP Estate, New Delhi falling under the jurisdiction of the Commissioner of Income Tax-X at Drum-shaped Building, IP Estate, New Delhi. The appellant Baljeet Singh from June, 2006 to 31.10.2010 was posted as an Inspector in the Income Tax Department and served in the office of JCIT, Range-29, under CIT-X, Drum-shaped Building, New Delhi. The appellant on regular transfer from the office of CIT-X assumed his responsibilities in new office i.e. IAP-V, CIT (Audit)-1 CR Building, New Delhi on 01.11.2010. The appellant Arun Kumar Gurjar from August, 2010 assumed the role of assessing officer for the scrutiny case of MPVC and Arju Garodia, Assistant Commissioner of Income Tax at the office of CIT-X, New Delhi was responsible for assessing this case before appellant Arun Kumar Gurjar. The appellant Baljeet Singh during his tenure in the office of CIT-X, Range-29, New Delhi assisted the appellant Arun Kumar Gurjar in the scrutiny case involving the assessment of Income Tax of MPVC. The appellant Baljeet Singh despite new position assisted the appellant Arun Kumar Gurjar in the scrutiny case involving the firm of the complainant and was also writing order sheets in the case file on the direction of the appellant Arun Kumar Gurjar. There was no official order attaching the appellant Baljeet Singh to the office of the appellant Arun Kumar Gurjar.

2.8 The complainant during investigation was found to be user of mobile no. 9311067502 (Reliance) and mobile no 9873574750 (Vodafone) was being used by the appellant Baljeet Singh. The chemical examination report dated 12.01.2011 revealed that the exhibits showed positive tests indicating the presence of PP Powder. The Forensic Voice Examination Report indicated positive results regarding the comparison between the questioned voice of the appellant Baljeet Singh as recorded in the CD labeled Q-2 and his reference specimen voice contained in a CD marked as S-1. The expert opinion dated 31.03.2011 indicated that the order sheet in the case file of MPVC was written in the handwriting of the appellant Baljeet Singh which were signed by the appellant Arun Kumar Gurjar.

2.9 The investigation established that the appellant Arun Kumar Gurjar engaged in criminal conspiracy with the appellant Baljeet Singh and they committed criminal misconduct by soliciting a bribe of Rs.5,00,000/- from the complainant, a partner in MPVC. The appellant Baljeet Singh on behalf of the appellant Arun Kumar Gurjar accepted Rs.2,00,000/- as bribe money from the complainant on 29.12.2010 in the office of the appellant Arun Kumar Gurjar to finalize scrutiny of assessment case of MPVC without any hurdle. The appellants Baljeet Singh and Arun Kumar Gurjar were implicated for the offences punishable under section 120B IPC read with section 7 of the PC Act. The charge sheet was filed after conclusion of investigation. The sanction for prosecution required under section 19 of the PC Act with respect to the appellants Arun Kumar Gurjar and Baljeet Singh were granted by the competent authorities.

3. The trial court vide order dated 26.02.2013 charged the appellants Baljeet Singh and Arun Kumar Gurjar for offences punishable under section 120B IPC read with section 7 of PC Act and for the substantive offence under section 7 of PC Act. The appellants Baljeet Singh and Arun Kumar Gurjar pleaded not guilty and claimed trial. The respondent/CBI to prove its case examined 23 witnesses including the complainant as PW1 and TLO Ram Singh as PW22. The prosecution evidence was ordered to be closed vide order dated 08.12.2014.

4. The statements of the appellants Baljeet Singh and Arun Kumar Gurjar were recorded under section 313 of the Code wherein they denied the incriminating evidence pertaining to their role in commission of the offence.

4.1 The appellant Arun Kumar Gurjar stated that the complainant PW1 never met him and he attended the proceedings only on 25.10.2010 in response to summons issued under section 131 of the

Income Tax Act. He never demanded any money from the complainant either directly or through the appellant Baljeet Singh. The respondent/CBI registered a false case against him on basis of fabricated documents. The appellant Baljeet Singh even after transfer assisted him in assessment case of the firm of the complainant as per practice and it was a time bound case and limitation was expiring on 31.12.2010 and the appellant Baljeet Singh was associated with case since inception. The appellant Arun Kumar Gurjar further stated that the assessment pertaining to the firm of the complainant was assigned to him by CIT-X in August, 2010 and was previously handled by Arju Garodia who issued a detailed questionnaire seeking information from the firm of the complainant for the completion of the scrutiny assessment but the complainant never submitted complete information. He after taking the charge of the case also sought the same information from the complainant. The complainant was aware that the matter was a time bound matter and the complainant intentionally delayed the proceeding. A detailed questionnaire/show-cause was issued to the complainant's firm but the information was again not supplied. The false case was registered on 29.12.2010 to avoid the completion of the assessment of the proceeding on or before 31.12.2010 as income tax department could not have taken any action after expiry of limitation period i.e. 31.12.2010 in the assessment case in question. He never made any demand directly or indirectly and performed his duty with honesty and sincerity in the best interest of the department. The firm of the complainant was assessed and the penalty was imposed after the registration of this case. The appellant Arun Kumar Gurjar pleaded innocence and false implication by the complainant as the complainant was apprehending substantial financial liabilities/penalties and prosecution under Income Tax Act. The appellant Arun Kumar Gurjar further stated that enquiries were also made by him about the sister concerns of M/s. Madhya Pradesh Vanijya Company which are RB Commodity Pvt. Ltd., Gaurav Traders etc. and the complainant in order to scuttle the said enquiries and to avoid further tax penalties/prosecution under Income Tax Act implicated him falsely. The appellant Arun Kumar Gurjar preferred to lead defence evidence and examined Om Prakash, Inspector at ITO, Ward no 47 (1), Drum Shape Building. The defence evidence on behalf of the appellant Arun Kumar Gurjar was ordered to be closed vide order dated 19.01.2015.

4.2 The appellant Baljeet Singh stated that he was not assessing officer and was not dealing income tax assessment case of the complainant. He never demanded or accepted any bribe from the complainant. He was not present at room no. 207. The tainted money was planted on him and nothing was recovered from him. He further stated that he was transferred from ward no. 29 with effect from 01.11.2010 but he was retained in department till 31.03.2011 due to rush of work on request of senior officers. The appellant Baljeet Singh further stated that a survey was conducted by the Income Tax Department under section 133A of the Income Tax Act at the godown situated at Siraspur and office situated at Naya Bazar belonging to Firm M/s Radha Kishan Banarsi Das, a family concern of the complainant. The appellant Baljeet Singh was a member and instrumental in survey team. M/s Radha Kishan Banarsi Das due to survey surrendered unaccounted money of Rs. 2 crores and had to pay penalty of about Rs. 74 lacs. The complainant has threatened him to teach a lesson and implicate him in false case out of vengeance.

The assessment case of the complainant was to be expired on 31.12.2010. The complainant got registered false case to avoid substantial financial penalties/liabilities. The appellant preferred to lead defence evidence and examined Shiv Swaroop Singh, Joint Commissioner of Income Tax, Range-7, Ludhiana, Punjab as DW1 and Ravinder Pal, Junior Judicial Assistant, Sessions Record Room, Patiala House Courts as DW2. The defence evidence on behalf of the appellant Baljeet Singh was ordered to be closed vide order dated 08.12.2014.

5. The trial court convicted the appellants for the offences punishable under section 120B IPC read with section 7 of the PC Act vide the impugned judgment by observing that the prosecution has established its case and all essential ingredient of offence under section 120 B IPC read with Section 7 of PC Act against the appellants Arun Kumar Gurjar and Baljeet Singh beyond any reasonable doubt and convicted the appellants Arun Kumar Gurjar and Baljeet Singh for the offences under section 120 B IPC read with section 7 of the PC Act.The relevant portion of the impugned judgm-ent is reproduced verbatim as under:-

34. In view of above discussion, testimony of witnesses, documents proved on record and the circumstances of the case it may be concluded that:-

i) A-1 was posted as Joint Commissioner of Income Tax and A-2 as Inspector, Income Tax and this fact has not been disputed even by accused persons.

ii) A-2 was assisting A-1 in the case of firm of the complainant even after the transfer.

iii) Income tax assessment case of Madhya Pardesh Vanijaya Company, the firm of the complainant was pending before A-1 which was time bound case and the limitation was going to be expired on 31.12.2015.

iv) Sanction for prosecution was duly granted by competent authorities for prosecution of A-1 and A-2.

v) Complaint was lodged by complainant in CBI and the FIR was registered.

vi)In pre trap proceedings PWl, PW10, PW18 and PW22 participated with some Other officials of CBI and the proceedings of pre trap has been supported by all the witnesses. In pre trap proceedings, complainant talked to A-2 over the phone and A-2 called the complainant to income tax office. This fact is supported by PWl, PW18 and PW22 and is corroborated by call detail record (CDR) and the oral testimony of these witnesses.

vii)The recorded conversation contained in CD Q-1 and CD Q-2 pertaining to pre trap and post trap proceedings; and the disclosure made by A-2 in the custody of CBI are not required to be taken into consideration being inadmissible evidence.

viii)PWl Complainant Sh. Pawan Kumar Aggarwal has supported the allegations of demand of bribe by A-1 and A-2 in income tax office; the acceptance of bribe by A-2; and

recovery of the same from possession of A-2 from room no.207. On the question of demand by A-1 and A-2 and the acceptance of bribe by A-2, PWl is the only witness but he has consistently supported these allegations during his testimony and his creditability could not be impeached on these aspects. Testimony of PWl inspires confidence and finds corroboration from the circumstantial evidence followed by recovery of bribe amount from A-2. The fact of recovery of bribe amount from possession of A-2 is fully supported by PWl, PW18 and PW22. PW10 has supported only to the extent that some recoveries were made in post trap proceedings.

ix) There is nothing on record to accept that PWl and PW22 had any motive to falsely implicate A-1 and A-2. PW10 and PW18 are the independent witnesses and there is no evidence to accept that they had any reason to falsely depose against A-1 and A-2. In totality of circumstances, the testimony of PWl, PW10, PW18 and PW22 has supported by each other on the material aspects of the case which find corroboration from the documents i.e recovery memo and handing over memo etc.

x) It has been supported by PWl, PW10, PW18 and PW22 that time and place of meeting in income tax office was fixed during telephonic conversation between PWl and A-2 in pre trap proceedings. In ordinary course of events, A-2 has noreason to call PWl to meet him in income tax office and no explanation has been given by A-2 in this regard.

xi)A-2 met PWl in room no.207 of income tax office which was office room of A-1. In ordinary course of events there was no reason for A-2 to meet a litigant in the office of his senior officer (A-1) when A-1 himself was present in the same complex. It corroborates the story of prosecution.

xii)A-l being the Joint Commissioner of Income Tax was the Assessing Officer of Income tax case of firm of PWl and A-2 was assisting him. In the' facts and circumstances of

the case, A-2 could not demand bribe from PWl without instructions of A-1. A-2 himself was in no position to give any favour to firm of PWl without aid and help of A-1 which has clearly established the criminal conspiracy between A-1 and A-2 for demanding and accepting the bribe in lieu of favours in income tax assessment case of firm of PWl.

xiii)The essential ingredient of offence i.e demand of bribe by A-1 and A-2; acceptance of bribe by A-2 from PWl and recovery of bribe amount from the possession of A-2 is proved by prosecution beyond any doubt. The entire chain of facts and circumstances proves that demand and acceptance of bribe was by A-1 and A-2 in conspiracy with each other. A-2 has failed to give any convincing explanation about possession of bribe amount and therefore, he has failed to rebut presumption under section 20 of P.C Act.

xiv)Entire chain of circumstances and the facts established on record proved the guilt of A-1 and A-2 without any doubt. There is no reasonable hypothesis established on record to suggest the innocence of A-1 and A-2. In totality the testimony of PWl, PW10, PW18 and PW22 and other PWs inspires confidence about truthfulness of material allegations.

xv)Defence plea of A-1 and A-2 about their false implication is not proved on record even in preponderance of probability and does not inspire any confidence. Therefore, the defence plea of false implication cannot be accepted.

35. In view of the above findings, I am of the considered view that prosecution has successfully established its case and all essential ingredient of offence u/s 120 B IPC r.w. Section 7 of P. C Act and section 7 of P. C Act against A-1 Arun Kumar Gurjar and A-2 Baljeet Singh beyond any

reasonable doubt. Therefore, A-1 Arun Kumar Gurjar and A-2 Baljeet Singh are convicted for the offence u/s 120 B IPC r.w. Section 7 of P. C Act and section 7 of PC Act. Let they be heard on quantum of sentence separately

5.1 The trial court vide the impugned order sentenced the appellants Baljeet Singh and Arun Kumar Gurjar. The relevant portion of the impugned order is reproduced verbatim as under:-

25. Keeping in view the entire facts and circumstances of the case, nature and gravity of offence, incriminating and mitigating circumstances, in my opinion, undue leniency in such cases is neither desirable nor warranted. The punishment should be proportionate to the gravity of offence but as well as should be deterrent enough to give a right message to such similar offenders.

26. Keeping in view the entire mitigating and incriminating circumstances, in my opinion, there is no substantial ground to differentiate the quantum of sentence between the two convicts.

27. Keeping in view the above discussions, convict Arun Kumar Gurjar and convict Baljeet Singh are sentenced in the following manner:-
a) To undergo rigorous imprisonment for 4 years and to pay fine Rs.One Lakh each for the offence u/s 120 B IPC r.w section 7 of Prevention of Corruption Act, 1988. In default of payment of fine the respective convictsshall undergo simple imprisonment for four months.

b) To undergo rigorous imprisonment for 4 years and to pay fine of Rs. One Lakh each for the offence u/s 7 of the Prevention of Corruption Act, 1988. In default of payment of fine the respective convicts shall further undergo simple imprisonment for four months.

28. All the sentences of imprisonment will run concurrently. Benefit of 428 Cr.P.C. be given to convict Arun Kumar Gurjar for the period from 29.12.2010 to 28.02.2011 and to convict Baljeet Singh for the period from 29.12.2010 to 25.02.2011 in respect of imprisonment already undergone by them.

29. In accordance with order on sentence, convict Arun Kumar Gurjar and Baljeet Singh be taken into custody and be sent to jail to undergo sentence. Personal bonds and surety bonds of both the convicts stands cancelled. Copy of the judgment, order on sentence, charge, report u/s 173 Cr.PC, statement of Pws and Dws and statement of accused ect be given to the convicts free of cost as per law. Custody warrants be prepared separately in accordance with the order of sentence.

6. The appellants being aggrieved by the impugned judgment and the impugned order filed the present appeals to set aside the impugned judgment and the impugned order.

6.1 The appellant Arun Kumar Gurjar challenged the impugned judgment and impugned order primarily on grounds that the prosecution case is based on speculations and the trial court has failed to appreciate the prosecution story in right perspective. The trial court ought to have granted benefit of doubt to the appellant Arun Kumar Gurjar as there was no direct evidence against him except disclosure statement of the appellant Baljeet Singh. The trial court convicted the appellant on basis of evidences which were not proved by the prosecution which was also observed by the trial court. The recorded conversations being CD Q-1 and CD Q-2 do not contain any reference of demand of the bribe by the appellant Arjun Kumar Gurjar and the trial court has rightly held that it is not safe to rely on recorded conversation. The trial court convicted the appellant Arun Kumar Gurjar merely on the ground that the appellant Baljeet Singh was transferred on 31.10.2010 but he after transfer and without any formal order was assisting the appellant Arun Kumar Gurjar including writing of order sheets and was sitting in the room of the appellant Arun Kumar Gurjar which is not an unusual practice. The independent witnesses PW10 and PW18 of trap proceedings did not support prosecution case on material aspects. The respondent/CBI did not conduct any inquiry against the appellant Arun Kumar Gurjar before registration of FIR. The prosecution has not led any evidence against the appellant Arun Kumar Gurjar to connect him with the alleged demand of bribe and only the call records of the appellant Baljeet Singh were seized, trap proceedings were conducted on the appellant Baljeet Singh and recovery was also effected from the appellant Baljeet Singh. The prosecution could not prove any conspiracy between the appellants Arun Kumar Gurjar and Baljeet Singh. The complainant has not mentioned any specific date and time of alleged demand. The testimony of the complainant was liable to be rejected being wholly unreliable, motivated being contradictory and the complainant was having reasons to falsely implicate the appellant Arun Kumar Gurjar to save himself from tax liabilities and criminal prosecution. There was inordinate delay in recording of FIR. The prosecution could not prove place of recovery. The impugned judgment itself is full of contradictions. The prosecution has failed to examine material witnesses. The prosecution has not obtained sanction under section 197 of the Code for prosecution of offence under section 120 B IPC. The trial court has awarded excessive sentence to the appellant Arun Kumar Gurjar. The appellant Arun Kumar Gurjar to challenge impugned judgment and impugned order also raised other grounds and referred case law as detailed in grounds of appeal. It is prayed that the impugned judgment and impugned order be set aside.

6.2 The appellant Baljeet Singh challenged the impugned judgment and impugned order on grounds that they are based on surmises, assumptions and conjectures and contrary to the evidence. The prosecution has failed to prove any prior meeting of mind between the appellants Arun Kumar Gurjar and Baljeet Singh to prove charge under section 120B IPC. The prosecution has not led legally admissible evidence to prove demand, acceptance and recovery to establish offence under section 7 of PC Act. The testimony is not corroborated by any independent evidence which is inconsistent, contradictory and improved testimony. The sanctioning authority PW19 S. M. Ashraf while granting sanction Ex. PW19/A against the appellant Baljeet Singh did not apply its mind. The complaint Ex PW 1/A is a fabricated document making the entire prosecution case highly suspicious. The original complaint made by the complainant PW1 was not produced during trial rather complaint Ex. PW1/A which was typed in office of CBI was produced during trial. The trial court erroneously presumed that there was no change in the complaint Ex PW 1/A. The prosecution has not proved initial demand which is most crucial ingredient of Section 7 of the PC Act. The deposition of the complainant PW1 regarding initial demand is self-contradictory and his testimony is unreliable. There is extraordinary delay in registration of FIR. The testimony of independent witness did not support case of prosecution and proved that the alleged recovery from the appellant Baljeet Singh was tainted and manipulated. The testimony of PW18 Jitender Bhardwaj has belied the entire prosecution version regarding the alleged trap of the appellant Baljeet Singh. The testimony of PW22 Ram Singh TLO is self-contradictory and he was an interested witness. The handing Over Memo Ex PW 1/E was a tainted document and no reliance can be placed on said document. The prosecution could not prove attendance of the complainant PW1 and submission of complaint on 28.12.2010. The trap proceedings are appearing to be doubtful from evidence led by the prosecution. The demand at spot is not proved. The prosecution could not prove alleged acceptance by the appellant Baljeet Singh from the complainant PW1 and alleged recovery is extremely doubtful. The washes relied on by the prosecution are fabricated and tempered. The prosecution has not examined material witnesses to establish guilt of the appellant Baljeet Singh. The appellant only assisted the office even after his transfer due to official exigencies and not because of any conspiracy. The appellant Baljeet Sigh also raised other grounds to challenge impugned judgment as detailed in grounds of appeal. It was prayed that impugned judgment and impugned order be set aside.

6.3 The appellants Arun Kumar Gurjar and Baljeet Singh as such challenged the impugned judgment and the impugned order primarily on the following grounds:-

i.) The prosecution has failed to establish any prior meeting of mind to prove charge under section 120 B IPC.

ii) There is no evidence led by the prosecution pertaining to prove demand, acceptance and recovery.

iii) The sanctioning authorities granted sanction to prosecute the appellants Arun Kumar Gurjar and Baljeet Singh without application of mind.

iv) The complaint Ex. PW1/A is a fabricated document making the entire prosecution case highly suspicious.

v) There is an extraordinary delay in lodging the FIR.

vi) The testimony of the complainant is unreliable contradictory and there are material contradictions,

improvements and inherent deficiencies in the testimony of the complainant.

vii). Hukum Chand PW10 did not support the case of the prosecution.

viii) The testimony of Ram Singh TLO PW22 is full of contradictions, improvements and inherent deficiencies and he was an absolute interested witness.

ix) Handing Over Memo Ex PW 1/E is a tainted document.

x) The prosecution has not proved attendance of the complainant PWl for lodging of the complaint in CBI Office on 28.12.2010.

xi) There are contradictions regarding attendance in the testimonies of PWl, PW10 and PW18 in CBI office on 29.12.2010.

xii) There is no evidence to prove demand at the spot.

xiii) The alleged acceptance of any bribe by appellants Arun Kumar Gurjar and Baljeet Singh from complainant PW1 is not proved.

xiv) The washes of the clothes were fabricated/tampered.

7. Chapter III of PC Act deals with offences and penalties. Section 7 deals with offence relating to public servant being bribed. The Supreme Court in **Soundarajan V State Rep. by the Inspector of Police Vigilance Anticorruption Dindigul,** Criminal Appeal No. 1592 of 2022 decided on 17th April, 2022 after referring **Mohan**

Singh V State of Bihar, (2011) 9SCC272; **Union of India V Ex.-GNR Ajeet Singh,** (2013) 4SCC186 and **Neeraj Dutta V State (Govt. of NCT of Delhi),** 2022 SCC OnLine SC1724 observed as under:-

> **9. It is well settled that for establishing the commission of an offence punishable under section of the PC Act, proof of demand of gratification and acceptance of the gratification is a *sine qua non*. Moreover, the Constitution Bench in case of Neeraj Dutta has reiterated that the presumption under section 20 of the PC Act can be invoked only on proof of facts in issue, namely, the demand of gratification by the accused and the acceptance thereof.**
>
> **12. There is no circumstantial evidence of demand for gratification in this case. In the circumstances, the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) have not been established. Unless both demand and acceptance are established, offence of obtaining pecuniary advantage by corrupt means covered by clauses (1) and (ii) of Section 13(1)(d) cannot be proved.**

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

> **3. Thus, the moot question that arises for answering the reference is, in the absence of the complainant letting in direct evidence of demand owing to the non-availability of the complainant or owing to his death or other reason, whether the demand for illegal gratification could be**

established by other evidence. This is because in the absence of proof of demand, a legal presumption under Section 20 of the Prevention of Corruption Act, 1988 (for short "the Act") would not arise. Thus, the proof of demand is a *sine qua non* for an offence to be established under Sections 7, 13(1)(d)(i) and (ii) of the Act and dehors the proof of demand the offence under the two sections cannot be brought home. Thus, mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof in the absence of proof of demand would not be sufficient to bring home the charge under Sections 7, 13(1)(d)(i) and (ii) of the Act. Hence, the pertinent question is, as to how demand could be proved in the absence of any direct evidence being let in by the complainant owing to the complainant not supporting the complaint or turning "hostile" or the complainant not beingavailable on account of his death or for any other reason. In this regard, it is necessary to discuss the relevant Sections of the Evidence Act before answering the question for reference.

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

> **"(1) Whether, in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988based on other evidence adduced by the prosecution?"**

66. Section 20 of the Act deals with presumption where public servant accepts gratification other than legal remuneration. It uses the expression "shall be presumed" in sub-section (1) and sub-section (2) unless the contrary is proved. The said provision deals with a legal presumption

which is in the nature of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act, etc. if the condition envisaged in the former part of the Section is satisfied. The only condition for drawing a legal presumption under Section 20 of the Act is that during trial, it should be proved that the accused had accepted or agreed to accept any gratification. The Section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification.

75. In B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC55 : (2014) 5 SCC (Cri) 543] , the complainant did not support the prosecution case. In P. Satyanarayana Murthy [P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152 :(2016) 1 SCC (Cri) 11] , the complainant had died prior to letting in his evidence in the case. In M. Narsinga Rao [M. Narsinga Rao v. State of A.P., (2001) 1 SCC 691 : 2001 SCC (Cri) 258], the question was whether a legal presumption could be based on a factual presumption. In Hazari Lal [Hazari Lal v. State (Delhi Admn.), (1980) 2 SCC 390 :1980 SCC (Cri) 458] , this Court through O. Chinnappa Reddy, J. observed that it is not necessary that the passing of money should be proved by direct evidence, it could also be proved by circumstantial evidence. Furthermore, in Madhukar Bhaskarrao Joshi v. State of Maharashtra [Madhukar Bhaskarrao Joshi v. State of Maharashtra, (2000) 8 SCC 571 : 2001 SCC (Cri) 34](“MadhukarBhaskarrao Joshi”), it was observed that in order to draw a presumption under Section 20 of the Act, the premise is that there was payment or acceptance of gratification. Once the said premise is established, the inference to be drawn is that the said gratification was accepted as a “motive or reward” for doing or forbearing to do any official act.

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

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

> **88.1. (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.**
> **88.2. (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter offact. 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 theproof 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 Section20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.

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

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

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

8. It is reflecting from record that the appellant Arun Kumar Gurjar was posted as Joint Commissioner of Income Tax and the appellant Baljeet Singh was posted as Inspector, Income Tax. The appellant Baljeet Singh was assisting the appellant Arun Kumar Gurjar in assessment case of the firm of the complainant even after his transfer and income tax assessment case of MPVC was time bound case and the limitation was to be expired on 31.12.2010. The complainant PW1 lodged complaint Ex. PW1/A with the respondent/CBI and after verification present FIR was got registered.

9. Sh. Siddharth Aggarwal, the learned Senior Counsel for appellant Arun Kumar Gurjar (appellant in CRL.A.630/2015) advanced oral arguments and also filed written submissions.

9.1 The learned Senior Counsel argued that the appellant Arun Kumar Gurjar posted as Joint Commissioner of Income Tax, Range 29 was victimized by the complainant by filing false and motivated complaint to derail the investigation into tax evasion by his firm MPVC which was to be time-barred on 31.12.2010 without any scope of further time extension. The complainant PW1 was a partner in MPVC which was selected for scrutiny for assessment year 2008-09 through Computer Assisted Scrutiny Selection (CASS) on 03.08.2009 Ex.PW1/DX-22 and was pending in Ward-29 of Range-29. The Income Tax Department issued notices to MPVC and related firms to obtain more information since 03.08.2009 but response given by MPVC was found to be unsatisfactory and complete documents were not submitted before assessing officers. The appellant Arun Kumar Gurjar became the Joint Commissioner of Income Tax of Range 29, Drum Shaped Building, ITO in CIT X in July 2010 and used to sit in room no 207. The pending assessment of MPVC was transferred from Arju Goradia, Assistant Commissioner of Income Tax, CIT X PW16 to the appellant Arun Kumar Gurjar by the order of Feroz Khan, Commissioner of Income Tax vide order dated 06.08.2010. The appellant Baljeet Singh was already posted as Inspector, Income Tax, Circle 29 (Range 29), CIT X in July

2010 and used to sit in room no 110. The appellant Baljeet Singh joined Circle 29 sometime in year, 2008 and was associated with the assessment of MPVC since then even before Arju Goradia PW16 handled it. The appellant Baljeet Singh also participated in surveys of the family firms of the complainant PW1 which was operating from office situated in Naya Bazaar which was also office of MPCV. The note sheets in MPVC's proceedings Ex. PW1/K2 were written by the appellant Baljeet Singh as reflected from Ex. PW6/B.

9.2 The learned Senior Counsel further argued that the complainant was motivated by malice to implicate the appellants Arun Kumar Gurjar and Baljeet Singh to derail the ongoing scrutiny of the firms of the complainant including MPVC. The complainant was a regular tax evader and was having grudge against the appellant Baljeet Singh as a quarrel happened between them during the survey conducted by IT department at the firm of the family of the complainant namely M/s Radha Krishan Banarsi Dass, Naya Bazaar Office which is also office of MPVC. The complaint was *mala fide* and a cover-up for the complainant's tax practices which were under the scanner even before the appellant Arun Kumar Gurjar took charge as the assessment officer. The complainant did not cooperate by giving responses to various notices issued to the complainant. The complainant deliberately timed the complaint so that scrutiny of MPVC would get derailed and time-barred on 31.12.2010. The complainant did not give any explanation as to why he filed the complaint on 28.12.2010 i.e. just 3 days before the investigation would become time-barred despite that first demand for a bribe allegedly being made in October 2010 as per Ex. PW 1/A. It was further argued that delay in FIR without proper explanation must be viewed with suspicion since it gives an opportunity to deliberate and embellish and relied on **Harilal V State of Chhattisgarh,** 2023 SCC OnLine SC 1124.

9.3 The learned Senior Counsel for the appellant Arun Kumar Gurjar further argued that there is no definite evidence of demand against the appellant Arun Kumar Gurjar except the complaint Ex. PW1/A. The complainant PW1 is an unreliable witness who changed his stance many times. The trial court also observed that testimony of the complainant as PW1 suffers from contradictions, improvements, and deficiencies and his testimony should be scrutinized with caution. The appellant cannot be convicted on basis of unreliable testimony of the complainant PW1 and referred **K.Ramadoss & another V Deputy Superintendent of Police,** 2019 SCC OnLine Mad16566 and **State of Punjab V Madan Mohan Lal Verma,** (2013) 14 SCC 153. The allegations of **demand** in October and December 2010 are vague, unclear and inherently improbable. It is also argued that there is no evidence of acceptance.

9.4 The learned Senior Counsel further argued that there was no proper verification by the respondent/CBI regarding allegations against the appellant Arun Kumar Gurjar. The investigating officer PW23 did not cross-verify version of the complainant about meeting the appellant Arun Kumar Gurjar in October or 27.12.2010 and no verification was made in respect of the appellant Arun Kumar Gurjar in the presence of the independent witnesses.

9.5 The learned Senior Counsel for the appellant Arun Kumar Gurjar regarding original complaint argued that the prosecution did not produce original complaint brought by the complainant in CBI office and suppression of the original complaint and its substitution with a new document made the entire case suspect and relied on **A. Sevi v. State of T.N.,** 1981 Supp SCC 43. It was further argued that non securing of the original complaint is a glaring error and relied on **C. Prasnnakumar @ Papanna and others V State,** Crl. A. No. 376/2006.

9.6 The learned Senior Counsel further argued that the prosecution has failed to establish conspiracy between the appellants Arun Kumar Gurjar and Baljeet Singh and pointed out that the trial court inferred conspiracy between the appellants Arun Kumar Gurjar and Baljeet Singh on four factors which are **i)** the appellant Baljeet Singh despite being transferred was assisting the appellant Arun Kumar Gurjar, **ii)** the appellant Baljeet Singh was not in individual position to grant any favour to the complainant PW1, **iii)** the appellant Baljeet Singh could not have demanded the bribe from the complainant PW1 without instruction of the appellant Arun Kumar Gurjar and **iv)** the appellant Baljeet Singh met the complainant PW1 in the office-room of the appellant Arun Kumar Gurjar. It was argued that these issues are not good enough to constitute conspiracy between the appellants Arun

Kumar Gurjar and Baljeet Singh. It was further argued that the alleged recovery was not affected in room of the appellant Arun Kumar Gurjar.

9.7 The learned Senior Counsel also argued that there are gross discrepancies in conduct of the trap proceedings by the respondent/CBI. The Handing Over Memo (HOM) is of doubtful veracity. The learned Senior Counsel also attempted to distinguish case law/judgments relied on by the respondent/CBI and in support of his arguments cited **Harilal V State of Chhattisgarh**, 2023 SCC OnLine SC 1124; **State of Punjab V Madan Mohan Lal Verma**, (2013) 14 SCC 153; **Mukut Bihari and Another V State of Rajasthan**, (2012) 11 SCC 642; **Sevi and Another V State of Tamil Nadu**, 1981 (Supp) SCC 43; **Tomaso Bruno and Another V State of U.P.**, (2015) 7 SCC 178; **CBI V K. Narayanrao**, (2012) 9 SCC 512; **Meena V State of Maharashtra**, (2000) 5 SCC 21. The learned Senior Counsel argued that the impugned judgment and the impugned order passed by the trial court be set aside and the appellant Arun Kumar Gurjar be acquitted.

10. Sh. Vikas Pahwa, the learned Senior Counsel for appellant Baljeet Singh (appellant in CRL.A.643/2015) advanced oral arguments and filed written submissions as well.

10.1 The learned Senior Counsel besides referring dates in chronical order to establish *mala fide* intention of the complainant in filing complaint argued that the appellant Baljeet Singh was falsely implicated and was wrongly convicted and the case of the prosecution suffers from inherent contradictions and prosecution failed to prove its case beyond reasonable doubt. The prosecution could not prove charges against the appellant Baljeet Singh.

10.2 It was argued that the trap was motivated and was orchestrated by the complainant PW1 with the help of the respondent/CBI. The complainant PW1 was facing income tax assessment proceedings for assessment year 2008-2009 which was to be time barred on 31.12.2010. Hanish Bansal who was not examined as witness, the authorised representative of MPVC wrote a letter dated 21.12.2010 addressed to the appellant Arun Kumar Gurjar seeking 15 days' time to produce the documents to make the assessment proceedings time barred under section 153 of the Income Tax Act, 1961 which was rejected by the appellant Arun Kumar Gurjar. The complainant PW1 was also having previous enmity with the appellant Baljeet Singh to falsely implicate him as the appellant was associated with the enquiry of firm M/s Radha Kishan Banarasi Das, a family firm of the complainant and the appellant Baljeet Singh during survey had heated arguments with the complainant. Hanish Bansal was handling proceedings on behalf of MPVC and if the appellants Arun Kumar Gurjar and Baljeet Singh wished to seek bribe, they could have demanded from Hanish Bansal. The complainant PW1 did not mention about survey against M/s Radha Kishan Banarasi in his complaint Ex. PW 1/A. DW 1 Shiv Swarup Singh, Joint Commissioner of Income Tax also deposed about the said scuffle between the appellant and the complainant.

10.3 The learned Senior Counsel further argued that the appellant Baljeet Singh was assisting the appellant Arun Kumar Gurjar in concluding assessment proceedings in various cases which is not contrary to the practice and procedure adopted by the IT Department during the period of completion of the assessment. The appellant Baljeet Singh was posted in the office of Joint Commissioner Income

Tax, Range-29, under CIT-X, Drum Shaped Building, New Delhi till 31.10.2010 and he joined new office i.e. lAP-V, GIT (Audit)-1, C.R. Building, New Delhi on 01.11.2010 on transfer and the appellant Baljeet Singh even after his transfer was assisting the appellant Arun Kumar Gurjar in scrutiny case of MPVC and writing order-sheets in the said case on the directions of the appellant Arun Kumar Gurjar. The appellant was not the assessing officer and had no authority or power in the assessment and was not in position to show any favour to the company of the complainant PW 1. The appellant Arun Kumar Gurjar sent a letter dated 22.10.2010 Ex PW16/DX whereby the appellant Arun Kumar Gurjar requested CIT-X for staying the operation of order of transfer of the appellant Baljeet Singh till 31.03.2011. Thereafter Firoz Khan CIT-X sent another letter dated 25.10.2020 ExPW14/DX to request CIT-VI for continuation of the appellant Baljeet Singh in Range 29 of CIT-X) till 31.03.2011. CCIT-VI also sent a letter dated 27.10.2010 whereby he forwarded the request of ClT-X for allowing the appellant Baljeet Singh to continue in his present place of posting till 31.03.2011 for favourable consideration. PW16 Arju Garodia deposed that the assessment case of MPVC was to be time barred on 31.12.10 and there is maximum work in Income Tax Department in last about 3-4 months of the year and the appellant Baljeet Singh was relieved in October-November, 2010 when there was maximum workload in the office in respect of the assessment work. PW16 also deposed that even after transfer of officers their assistance are being taken by the officers as and when required in important or time barred matters. DWl Shiv Swaroop Singh, Joint Commissioner of Income Tax has also deposed that as a matter of practice sometimes senior officers used to request the officials for their assistance even after their transfer. PW23 on 10.10.2014 stated that he did not notice any illegality in the order sheets and proceedings pertaining to the case of MPVC.

10.4 The learned Senior Counsel further argued that the prosecution has failed to prove the initial demand which is a *sine qua non* for convicting an accused for an offence under section 7 of PC Act. The initial demand of Rs. 5 lakhs which was allegedly made in October 2010 is only mentioned in the complaint Ex PW 1/A which is contradictory to deposition of PW 1 in his chief examination. The complainant PW 1 introduced for the first time in his examination in chief dated 03.06.2013 that initially demand of Rs 1.5 lakhs was made by the appellants Arun Kumar Gurjar and Baljeet Singh. The investigating officer PW 23 Vijay Bahadur in cross examination states that he did not cross verify the version of complainant about his alleged meeting with the appellant Arun Kumar Gurjar in October 2010. The deposition of the complainant PWl has material contradictions, improvements and deficiencies and was an interested witness. The learned Senior Counsel regarding demand made in December, 2010 submitted that the allegation of demand of Rs. 5 lacs was introduced for the first time on 22/23 December 2010 and on 27.12.2010 remained uncorroborated hence the sole testimony of the complainant PW1 cannot be relied upon to prove such demand beyond reasonable doubt. The complainant PW1 admitted that no complaint was filed by him before any authority in December 2010 prior to meeting on 27.12.2010. The trial court in impugned judgment held that it is not safe to rely on recorded conversation hence the demand is not corroborated by any substantive piece of evidence. TLO Ram Singh PW22 was an interested witness and his deposition has contradictions, improvements and deficiencies and as such it can be relied on. There is no corroboration to the demand made as the testimony of PW 22 has to be discarded and the sole testimony of the complainant PW1 in relation to such demand remains uncorroborated. The learned Senior Counsel relied on **P. Satyanarayana Murthy V District inspector of police state of AndhraPradesh,** (2015) 10 SCC 152; **B. Jayaraj V State of Andhra Pradesh**, (2014) 13 SCC 55 and others judgments.

10.5 It was also argued that the prosecution has failed to prove that the appellant Baljeet Singh accepted any bribe whether voluntary or otherwise from the complainant PW 1 on 29.12.2010 in room 207. It is case of the respondent/CBI that the complainant PWl met the appellant Baljeet Singh alone in room 207 and shadow witness was not present and as such there is no corroboration or support to his version by the independent witness or the recovery witness.

10.6 It was further argued that the presumption under section 20 of PC Act against a public servant can be drawn only after demand and acceptance of illegal gratification is proved. The complaint dated 28.12.2010 is a false and manipulated document. There is ample evidence to suggest that documents prepared by CBI during alleged verification, handing over and recovery were prepared subsequently after the arrest of the appellants Arun Kumar Gurjar and Baljeet Singh. The learned Senior Counsel also advanced other arguments as detailed in written submissions.

11. Ms. Anubha Bhardwaj, the learned Special Public Prosecutor for the respondent/CBI advanced oral arguments and also submitted written submissions.

11.1 It was argued that the appellant Arun Kumar Gurjar, Joint Commissioner of Income tax was assessing officer (AO) of firm of the complainant MPVC and during October, 2010 to December 2010 connived with the appellant Baljeet Singh and entered into criminal conspiracy and in pursuance thereof by abusing their position as public servants while scrutinizing the income tax assessment of 2008-2009 of MPVC, the appellant Arun Kumar Gurjar and the appellant Baljeet Singh demanded illegal gratification of 5 lakhs in the month of October, 2010 from the complainant PW1, the partner of MPVC for scrutiny and finalizing the income tax assessment without any hurdle. A notice dated 20.12.2010 was issued to MPVC when the complainant PW1 refused to pay the bribe amount of' 5 lacs and when the complainant visited the office on 27.12.2010, the appellants Arun Kumar Gurjar and Baljeet Singh again demanded bribe of Rs. 5 lacs from the complainant PW1 for finalization of entire matter without any hurdle and illegal gratification of Rs. 2 lacs was accepted by the appellants Arun Kumar Gurjar and Baljeet Singh on 29. 12.2010 from the complainant.

11.2 The trial Court has passed the impugned Judgement after appreciation of entire evidence and law. The appellant Arun Kumar Gurjar was posted as Joint Commissioner of Income tax and the appellant Baljeet Singh was posted as inspector. The appellant Baljeet Singh was assisting the appellant Arun Kumar Gurjar in the case of firm of the complainant even after his transfer. The income tax assessment case of MPVC, the firm of the complainant was pending before the appellant Arun Kumar Gurjar which was time bound case and limitation was to expired on 31.12.2010. The complainant lodged the complaint on 28.12.2010 and FIR was registered on 28.12.2015. The complainant PW2, Hukum Chand PW10, Jitender Bhardwaj PW18 and TLO Ram Singh PW22 along with other officials of CBI participated in pre trap proceedings and these witnesses supported pre trap proceedings. The complainant in pre trap proceedings talked to the appellant Baljeet Singh over the phone who called the complainant to income tax office and this fact is supported by PW1, PW18 and PW22 and is corroborated by call detail records (CDR) and the oral testimonies of these witnesses. The complainant PW1 has supported allegations of demand of bribe by the appellants Arun Kumar Gurjar and Baljeet Singh in income tax office; the acceptance of bribe by the appellant Baljeet Singh and recovery of the same from possession of the appellant Baljeet Singh from room no. 207. The complainant PW1 being sole witness of demand by the appellants Arun Kumar Gurjar and Baljeet Singh and acceptance of bribe by the appellant Baljeet Singh has consistently supported these allegations during his testimony and his credibility cannot be impeached and inspires confidence. The testimony of the complainant PW1 is corroborated by circumstantial evidence followed by recovery of bribe amount from the appellant Baljeet Singh which is corroborated by the PW1, PW18 and PW22 and PW10 has supported only to the extent that some recoveries were made in post trap proceedings.

11.2.1 It was further argued that there is nothing to establish that the complainant PW1 and TLO PW22 (TLO) had any motive to falsely implicate the appellants Arun Kumar Gurjar and Baljeet Singh. PW10 and PW18 are the independent witnesses and there is no evidence to accept that they had any reason to falsely depose against the appellants Arun Kumar Gurjar and Baljeet Singh. The respective testimony of PW1, PW10, PW18 and PW22 are supporting each other in material particulars and corroborated from the documents i.e. recovery memo and handing over memo etc. The appellant Arun Kumar Gurjar being the Joint Commissioner of Income Tax was the assessing officer of income tax case of firm of the complainant PW1 and the appellant Baljeet Singh was assisting him and in such circumstance the appellant Baljeet Singh could not demand bribe from the complainant PW1 without instruction of the appellant Arun Kumar Gurjar and the appellant Baljeet Singh was not in position to give any favour to firm of the complainant without aid and help of the appellant Arun Kumar Gurjar which has clearly established the criminal conspiracy between the appellants Arun Kumar Gurjar and Baljeet Singh for demanding and accepting the bribe in lieu of favours in income tax assessment case of firm of the complainant PW1.

11.2.2 The learned Special Public Prosecutor further argued that essential ingredients of offence i.e. demand of bribe by the appellant Arun Kumar Gurjar, acceptance of bribe by the appellant Baljeet Singh from the complainant PW1 and recovery of bribe amount from the possession of the appellant Baljeet Singh are proved by prosecution beyond any doubt. The appellant Baljeet Singh has failed to give any convincing explanation about possession of bribe amount and as such has failed to rebut presumption under section 20 of PC Act. The respective testimony of PW1, PW10, PWI8 and PW22 and other PWs inspires confidence about truthfulness of material allegations.

11.3 The Special Public Prosecutor in respect of role of the appellant Baljeet Singh argued that he was unofficially rendering his service to the appellant Arun Kumar Gurjar even after his transfer from CIT-X, range -29 due to criminal conspiracy between them. The appellant Baljeet Singh was assisting the appellant Arun Kumar Gurjar in case of scrutiny of MPVC even after his transfer and was writing the order sheets of the case of firm of the complainant on the direction of the appellant Arun Kumar Gurjar and there was no official order of attachment of the appellant Baljeet Singh to the office of the appellant Arun Kumar Gurjar. It was further argued that without the connivance of the appellant Arun Kumar Gurjar it was not possible for the appellant Baljeet Singh to demand or obtain illegal gratification from the complainant in the office of the appellant Arun Kumar Gurjar. The illegal gratification of 2 lacs in currency notes of serial numbers as mentioned in the handing Memo was recovered from the pocket of the appellant Baljeet Singh in the presence of independent witnesses. The appellant Baljeet Singh had no justification of having that amount in his possession.

11.3.1 It was further argued that the complainant PW1 was user of mobile phone number 93110675502 (Reliance) as reflected from testimony of PW8 Rajender Kumar and mobile number 9873574750 (Vodafone) was being used by the appellant Baljeet Singh. The pre trap proceedings are supported by PW1, PW10, PW18 and PW22. The test of hand washes and cloth washes gave positive results for the presence of PP Powder which reflects that PP Powder smeared envelope of trap money came in contact of the hands and cloths of the appellant Baljeet Singh and indicates the acceptance of bribe money by him. The order sheets pertaining to case of firm of the complainant were written by the appellant Baljeet Singh and signed by the appellant Arun Kumar Gurjar as reflected from opinion of expert from GEQD, Shimla.

11.4 The learned Senior Public Prosecutor in respect of role of appellant Arun Kumar Gurjar argued that the appellant Arun Kumar Gurjar, Joint Commissioner of Income Tax, had joined Range 29 in the month of July 2010 and was Assessing Officer (AO) of firm of the complainant. The appellant Arun Kumar Gurjar even after transfer of the appellant Baljeet Singh was getting his services without any attachment order to his office. The complainant PW1 deposed that the appellants Arun Kumar Gurjar and Baljeet Singh have demanded bribe in the month of October and the appellant Baljeet Singh called the complainant in the office of Income Tax on 29.12.2010. The appellant Baljeet Singh received bribe from the complainant in the office of appellant Arun Kumar Gurjar even after knowing the fact that appellant Arun Kumar Gurjar was present in the same building. During the search conducted in the office of appellant Arun Kumar Gurjar on 29.12.2015, a sum of Rs. 6 lacs was recovered from the office drawer of room no 207 of the appellant Arun Kumar Gurjar in the presence of witnesses which was corroborated from document Ex. PW15/A i.e. search list dated 29.12.2010, testimonies of PW15 Kamal Kapoor, Joint Commissioner, Income Tax and PW21 Raja Chatterjee, Inspector CBI who conducted search at room no. 207 post trap. PW2 Narender Nahata, an Income Tax Practitioner has deposed that he had not given any cash amount to the appellant Arun Kumar Gurjar. The appellant Arun Kumar Gurjar could not satisfactorily explained recovery of Rs. 6 lacs which reflected that he was indulged in corrupt practices.

11.5 The learned Special Public Prosecutor during arguments also controverted arguments advanced on behalf of the appellants Arun Kumar Gurjar and Baljeet Singh as detailed in written submissions filed on behalf of the respondent/CBI.

12. The trial court in impugned judgment in light of arguments advanced on behalf of the appellant Arun Kumar Gurjar that no sanction under section 197 of the Code was obtained prior to taking cognizance for offence under section 120 B IPC observed that the appellants Arun Kumar Gurjar and Baljeet Singh faced charge for offence under section 7 of the PC Act and conspiracy to commit offence under section 7 of PC Act and further observed that conspiracy to take bribe within the meaning of PC Act cannot be connected to the official discharge of duty by any imagination. The trial court also discussed and distinguished case law cited on behalf of the appellant Arun Kumar Gurjar. The trial court further observed that PW19 S.M Ashraf, Commissioner of Income Tax, GIT, Audit-I, C.R Building, IP Estate, New Delhi granted sanction Ex. PW19/A for prosecution against the appellant Baljeet Singh and PW20 Suresh Sivanandan, Under Secretary (V &L-I), CBDT, Ministry of Finance, Department of Revenue, Govt of India, New Delhi proved sanction dated 13.3.2012 Ex.PW20/A granted against the appellant Arun Kumar Gurjar by him on the basis of approval by the then Finance Minister, Govt. of India. The trial court also observed that sanction order Ex.PW19/A against the appellant Baljeet Singh and sanction order Ex.PW20/A against the appellant Arun Kumar Gurjar reflect that detailed facts and evidence was discussed and accordingly sanctions were accorded with application of mind. There is nothing in said finding of the trial court to interfere. The trial court has rightly and correctly observed that sanctions Ex. PW19/A and Ex. PW20/A were granted with due application of mind and are legally valid.

13. The trial court in impugned judgment also considered arguments advanced on behalf of the appellant Baljeet Singh that telephonic conversation allegedly contained in CD Q-1 and CD Q-2 are alleged recorded conversation at the time of pre trap and post trap proceedings are not admissible in evidence. It was also argued that conversation was originally recorded in DVR which was transferred in CD Q-1 and CD Q-2 from the DVR but original DVR has not been produced and CDs prepared from DVR is electronic evidence within the meaning of Evidence Act and therefore, certificate under section 65 B of the India Evidence Act, 1872 is mandatory requirement but certificate under section 65 B of the Indian Evidence Act, 1872 was neither issued nor produced before the court. The trial court after referring **Anwar RV V P.K Bhaseer**, Civil Appeal No 4226/2012 decided on 18.09.2014 by the Supreme Court of India observed that certificate under section 65 B of the Indian Evidence Act, 1872 was required from the person who prepared CD Q-l and CD Q-2 with the help of laptop/computer from DVR and the recorded conversation contained in CD Q-l and CD Q-2 is not admissible in evidence.

13.1 The trial court also observed that it is reflected from evidence that at some places the recorded conversation could not be properly identified by the complainant PW1, many portions are not audible and some portions are not clearly audible and there are loud background voices in some portions. The trial court further observed that there is no finding in CFSL report proved by PW3 Amitosh Kumar, SSO-II (Physics), CFSL, CBI, New Delhi to eliminate the possibility of tampering in recorded conversation. The trial court under given facts and circumstances of present case rightly observed that it is not safe to rely on such a recorded conversation apart from the admissibility of this evidence on account of certificate under section 65B of the Indian Evidence Act, 1872.

14. The complainant PW1 deposed that he was one of the partners of MPVC in year 2010 which was an income tax assesse and used to file income tax return regularly. The assessment of income tax was under the jurisdiction of ward no.29. The appellants Arun Kumar Gujjar and Baljeet Singh were dealing with the income tax assessment of MPVC for the assessment year 2008-2009. The complainant used to meet the appellants Arum Kumar Gujjar and Baljeet Singh in relation with the income tax assessment in their office. The complainant in October, 2010 in response to a notice received from the income tax office pertaining to the assessment of income tax of MPVC for the year 2008-2009 met the appellant Baljeet Singh in his office and submitted few documents required by income tax department for the assessment of income tax. The complainant PW1 again met the appellant Baljeet Singh who asked the complainant PW1 to submit other documents. The complainant PW1 again met the appellant Baljeet Singh in mid of December, 2010 in his office and the appellant Baljeet Singh took him to the office of the appellant Arun Kumar Gujjar where the appellant Baljeet Singh demanded bribe of Rs.5 lacs to settle the case. The complainant PW1 again met the appellant Baljeet Singh on 22nd/23rd, December, 2010 in his office where the appellant Baljeet Singh again demanded Rs.5 lacs. The complainant again met the appellant Baljeet Singh in his office on

27.12.2010 but he did not agree to accept less than Rs. 5 lacs to settle case. The complainant on 28.12.2010 lodged a complaint Ex. PWl/A in the office of CBI, New Delhi. The complainant PW1 in cross examination conducted on behalf of the appellant Baljeet Singh deposed and admitted that he firstly visited office of CBI on 28.12.2010 and he reached the CBI office along with the already written complaint which was typed by his staff namely Hanish Bansal on his instructions in the morning of 28.12.2010. The complainant PW1 further deposed that the complaint Ex. PWl/A is not the same complaint which was typed by Hanish Bansal in office as there were mistakes in the complaint typed by Hanish Bansal and due to this complaint Ex. PW1/A was retyped in CBI office. The complainant PW1 could not answer whether the complaint typed by Hanish Bansal was returned back to him by the CBI officers. The complainant PW1 denied suggestion that the complaint Ex. PWl/A was typed in CBI office according to the directions of the CBI officers by incorporating false facts. It is reflecting from the testimony of the complainant Ex. PW1/A was not the complaint which was originally brought by the complainant in office of CBI and the complaint Ex. PW1/A was retyped in office of CBI.

14.1 The learned Senior Counsel for the appellant Arun Kumar Gurjar argued that entire prosecution case is suspected as the prosecution did not produce original complaint which was substituted by a new document and relied on **Sevi V State of T.N.,** 1981 Supp SCC 43. He further argued that the respondent/CBI did not secure original complaint which is a glaring error and relied on **C. Prasnnakumar @ Papanna and others V State,** Crl. A. No. 376/2006 decided on 13th March, 2013 by the High Court of Karnataka. He further argued that Hanish Bansal was dropped as a witness and an adverse inference under Section 114(g) of the Indian Evidence Act, 1872 must be drawn against the prosecution and relied on **Tomaso Bruno V State of U.P.,** (2015) 7 SCC 178.

14.2 The learned Senior Counsel for the appellant Baljeet Singh argued that the complaint dated 28.12.2010 Ex. PW1/A is a false and manipulated document as the original complaint which was typed in office of the complainant PW1 was never produced during trial. The complainant PW1 also admitted that the complaint EX PWl/A was not the same complaint which was typed by Hanish Bansal in office and the complaint Ex. PW1/A was retyped in the CBI office. The respondent/CBI/prosecution did not examine Hanish Bansal who was an important witness and as such adverse inference is required to be taken against the prosecution.

14.3 The trial Court in impugned judgment regarding argument that the complaint Ex. PW1/A is a fabricated document and other arguments as detailed herein above observed that in present case it was established that the original complaint was typed in the office of the complainant PWl and was given to CBI where another complaint Ex.PWl/A was prepared which became the basis for registration of FIR and the original complaint was not produced by prosecution during trial. The trial court further observed that the complainant PW1 during testimony explained retyping of the complaint in CBI office as it was not properly addressed and change in complaint is required to be seen in the facts and circumstances of the particular case. PW 10 gave explanation and admitted his signature on the complaint. The trial court further observed that there was nothing on record to accept that any material allegation of complaint was changed and ultimately opined that in the facts and circumstances of the present case, no importance can be given to this aspect of complaint. The trial court also distinguished case law under given facts and circumstances of the case.

14.4 The learned Special Public Prosecutor for CBI in light of observation made by the trial court argued that the trial court in impugned judgment has considered the arguments advanced on behalf of the appellants Arun Kumar Gurjar and Baljeet Singh and rightly held that there was nothing on record to prove that there was any material change in the retyped complaint except the proper address as clarified by the complainant PW1 during his testimony and trial court has rightly held that in the facts and circumstances of the present case no importance can be given on this aspect of change of complaint.

14.5 The Supreme Court in **Sevi and another V State of Tamil Nadu and another** as cited by the learned Senior Counsel for the appellant Arun Kumar Gurjar observed as under:-

> **According to the suggestion of defence the original First Information Report which was registered was something altogether different from what has now been put forward as the First Information Report and that the present report**

is one which has been substituted in the place of another which was destroyed. To substantiate their suggestion the defence requested the Sessions Judge to direct the Sub-Inspector to produce the First Information Report Book in the Court so that the counterfoils might be examined. The Sub-Inspector was unable to produce the relevant F.I.R. Book in Court notwithstanding the directions of the Court. The F.I.R. book, if produced, would have contained the necessary counterfoils corresponding to the F.I.R. produced in Court. The Sub-Inspector when questioned stated that he searched for the counterfoil book but was unable to find it, an explanation which we find impossible to accept. We cannot imagine how any F.I.R. Book can disappear from a Police Station. Though he claimed that relevant entries had been made in the general diary at the Station the Sub-Inspector did not also produce the general diary in Court. The production of the general diary would have certainly dispelled suspicion. In the circumstances we think that there is great force in the submission of the learned Counsel for the accused that the original F.I.R. has been suppressed and, in its place some other document has been substituted. If that is so, the entire prosecution case becomes suspect. All the eye-witnesses are partisan witnesses and notwithstanding the fact that four of them were injured we are unable to accept their evidence in the peculiar circumstances of the case. Where the entire evidence is of a partisan character impartial investigation can lend assurance to the Court to enable it to accept such partisan evidence. But where the investigation itself is found to be tainted the task of the Court to sift the evidence becomes very difficult indeed.

The High Court of Karnataka in **Prasannakumar @ Papanna and others V State,** Criminal Appeal No 376/2006 decided on 13.03.2013 observed that the original complaint was not produced and no steps were taken to produce original complaint during the trial and as such it cannot be looked into.

14.6 In the present case the complainant PW1 brought one typed complaint in office of CBI which was stated to be not properly addressed. Thereafter another complaint Ex. PW1/A was retyped in office of CBI and said complaint is basis of registration of present FIR. There is nothing on record which can suggest that the contents of previous complaint which was already typed in office of the complainant PW1 were materially different from the complaint Ex. PW1/A which was retyped in office of CBI. Although previous complaint was not produced during trial and this may raise suspicion about case of prosecution but is not fatal to case of prosecution. The trial court rightly held that there was nothing to prove that there was any material change in the retyped complaint except the proper address as clarified by the complainant PW1 during his testimony and no importance can be given on aspect of change of complaint in the facts and circumstances. The trial court rightly observed that case law cited on behalf of the appellants as referred herein above can be distinguished under facts and circumstances of present case.

15. The learned Senior Counsel for the appellant Arun Kumar Gurjar argued that it is a settled principle of law that delay in FIR without proper explanation must be viewed with suspicion since it gives an opportunity to deliberate and embellish and relied on **Harilal V State of Chhattisgarh,** 2023 SCC OnLine SC 1124. The learned counsel for the appellant Baljeet Singh also argued that there was delay in lodging FIR as alleged demand was made in October, 2010 but FIR was registered on 29.12.2010 on complaint dated 28.12.2010 as the assessment in respect of MPVC was going to be time barred and needed to be completed by 31.12.2010. The Special Public Prosecutor in argument defended observation made by the trial court in impugned judgment regarding delay in FIR.

15.1 The trial court in impugned judgment considered argument advanced on behalf of the appellants Arun Kumar Gurjar and Baljeet Singh that the appellants Arun Kumar Gurjar and Baljeet Singh as per complaint Ex. PWl/A allegedly demanded bribe of Rs.5 lacs from the complainant in October 2010 which he refused to pay and the bribe was again demanded by the appellants Arun Kumar Gurjar and Baljeet Singh in December, 2010 and the complainant approached

CBI on 28.12,2010 only due to reason that income tax assessment case of firm of the complainant was to be time barred on 31.12.2010. The trial court also considered argument that no explanation was given by the complainant or the prosecution that why the complainant did not approach investigating agency or any other authority in October/November 2010 i.e. immediately after the demand of bribe and unexplained delay in reporting the matter has created a serious doubt about the genuineness of the complaint and testimony of the complainant. The trial court in impugned judgment observed that that delay in FIR is not fatal in each and every case if it is properly explained. The trial court further observed that as per the complainant PW1 first demand was made by the appellants Arun Kumar Gurjar and Baljeet Singh in October, 2010 but the complainant approached CBI on 28.12.2010 and there was nothing on record to accept that due to delay in FIR there had been any material change in the allegations and there was no reason for the complainant PW1 to lodge a complaint against senior public servants and held that there was no unusual delay in lodging FIR.

15.2 The Supreme Court in **Harilal V State of Chattisgarh** as referred by the learned Senior Counsel for the appellant Arun Kumar Gurjar observed as under:-

> **When an FIR is delayed, in absence of proper explanation, the courts must be on guard and test the evidence meticulously to rule out possibility of embellishments in the prosecution story, inasmuch as delay gives opportunity for deliberation and guess work.**

15.3 It is accepted legal proposition that delay in lodging FIR must be properly explained to rule out chance of manipulation and embellishments. In present case the appellants Arun Kumar Gurjar and Baljeet Singh were handling income tax assessment of firm of the complainant i.e. MPVC. The appellants Arun Kumar Gurjar and Baljeet Singh as per the complainant initially demanded bribe of Rs. 1.5 lacs in month of October, 2010 which was raised to Rs. 5 lacs in month of December, 2010 which the complainant was not able to pay and thereafter the complainant on 28.12.2010 lodged the complaint Ex. PW1/A which was basis of registration of FIR. The prosecution under given facts and circumstances of case has properly explained delay in registration of FIR. There is no legal force in arguments advanced on behalf of appellants Arun Kumar Gurjar and Baljeet Singh that there was unexplained delay in registration of FIR.

16. The respective Senior Counsels for the appellants Arun Kumar Gurjar and Baljeet Singh pleaded argued malicious prosecution of the appellants Arun Kumar Gurjar and Baljeet Singh by the complainant PW1. The learned Senior Counsel for the appellant Arun Kumar Gurjar argued that the complainant PW1 was motivated by malice to implicate the appellant Arun Kumar Gurjar to derail ongoing scrutiny of various companies of the complainant including MPVC and one of the firm of the complainant namely M/s Radha Krishan Banarsi Dass was subjected to survey by the IT Department in January 2010 and paid tax liability/penalty of Rs. 74 lacs due to surrender of unaccounted stock of about Rs.2 crores. The appellant Baljeet Singh had a quarrel with the complainant PW1 during survey conducted by IT department regarding M/s Radha Krishan Banarsi Dass. The complainant lodged false complaint Ex. PW1/A to cover up his tax practices which were under scanner even before the appellant Arun Kumar Gurjar took charge as assessing officer. The case of MPVC was selected for scrutiny through Computer Assisted Scrutiny

Selection (CASS) since 2009 Ex.PW1/DX22 and was allotted to the appellant Arun Kumar Gurjar. The complainant PW1 deliberately timed the complaint Ex. PW1/A in a way that the scrutiny of MPVC would get derailed and time-barred on 31.12.2010. The complainant PW1 has abused action of CBI as an excuse to obtain undue benefit.

16.1 The learned Senior Counsel for the appellant Baljeet Singh after referring dates in chronological order to establish motive on part of the complainant PW1 also argued that the trap was motivated by the complainant PW1 as firm of the complainant MPVC was facing income tax assessment proceedings for assessment year 2008-2009 which was to be time barred on 31.12.2010. The complainant PW1 had a reason to delay the ongoing proceedings of Income Tax Assessment by 3 days and also had previous enmity with the appellant Baljeet Singh to falsely implicate him. The appellant Baljeet Singh and the complainant had heated arguments during survey conducted by IT Department regarding another firm of the complainant namely M/s Radha Kishan Banarasi Das. The learned Senior Counsel for the appellant Baljeet Singh also referred testimony of DWl Shiv Swarup Singh, Joint Commissioner of

Income Tax who also deposed about scuffle between the appellant Baljeet Singh and the complainant.

16.2 The learned Special Public Prosecutor for the respondent/CBI argued that there is nothing on record to accept that the complainant PW1 and PW22 Ram Sing TLO had any motive to falsely implicate the appellants Arun Kumar Gurjar and Baljeet Singh and PW10 and PW18 were the independent witnesses without any reason to falsely depose against the appellants Arun Kumar Gurjar and Baljeet Singh. The respective testimony of PW1, PW10, PW18 and PW22 has supported by each other on the material particulars and are corroborated by the documents i.e. recovery memo and handing over memo etc. The learned Special Public Prosecutor also referred relevant part of the impugned judgment.

16.3 The trial court in impugned judgment discussed arguments advanced on behalf of the appellants Arun Kumar Gurjar and Baljeet Singh that the complainant PW1 was having motive to falsely implicate the appellants Arun Kumar Gurjar and Baljeet Singh as the complainant PWl had a scuffle/quarrel with the appellant Baljeet Singh at the time of survey of his firm in another income tax case and income tax assessment pertaining to MPVC was to be time barred on 31.12.2010 and due to this the complainant PW1 was having motive against the appellant Baljeet Singh. The trial court after considering these arguments observed that the appellant Baljeet Singh had dispute with the complainant appellant Baljeet Singh at the time of survey of another firm for income tax assessment case. The appellant Baljeet Singh was assisting the appellant Arun Kumar Gurjar in the income tax assessment case of MPVC and was writing the order sheets. The trial court further observed that the appellant as per testimony of the complainant PW1, the appellant Baljeet Singh was continuously in the touch in respect of demand of bribe. The trial court held that in ordinary course of events, it is hard to believe that the complainant PWl will go to the extent of lodging false case against the appellant Baljeet Singh on account of minor argument much prior to present case. The trial court further observed that as per record assessment case of MPVC was going to be barred on 31.12.2010 and held that it is not probable that the complainant PWl would have lodge the false complaint against the appellants Arun Kumar Gurjar and Baljeet Singh just to delay the time bound income tax assessment case of

MPVC and there was in particular no reason for the complainant PW1 to implicate the appellant Arun Kumar Gurjar. Accordingly in consideration of the trial court plea of false implication of the appellants Arun Kumar Gurjar and Baljeet Singh by the complainant PWl did not inspire any confidence and there is no convincing material on record to accept the plea of false implication. The trial court as such considered plea of false implication of the appellants Arun Kumar Gurjar and Baljeet Singh by the complainant PW1 due to reasons as mentioned hereinabove in detail and in right perspective. The plea of false implication is without any justification and there is no force in arguments advanced by the learned Senior Counsels for the appellant Arun Kumar Gurjar and the Baljeet Singh that they were falsely implicated at instance of the complainant due to reasons as detailed hereinabove.

17. Another issue which needs judicial consideration is existence of conspiracy between the appellants Arun Kumar Gurjar and Baljeet Singh as alleged by the prosecution. The learned Senior Counsel for the appellant Arun Kumar Gurjar argued that the prosecution has failed to establish conspiracy between the appellants Arun Kumar

Gurjar and Baljeet Singh and trial court in impugned judgment wrongly inferred existence of conspiracy between them as the appellant even after being transferred was assisting the appellant Arun Kumar Gurjar; the appellant Baljeet Singh was not in any individual position to grant any benefit or favour to the complainant PW1; the appellant Baljeet Singh could not have demanded the bribe from the complainant PW1 without the appellant Arun Kumar Gurjar and the appellant Baljeet Singh met the complainant in office room of the appellant Arun Kumar Gurjar. It was further argued that mere fact that the appellant Baljeet Singh was assisting the appellant Arun Kumar Gurjar after transfer in the assessment of MPVC cannot lead to any inference of conspiracy between the appellant Arun Kumar Gurjar and Baljeet Singh as it was not uncommon to take assistance of transferred officers which was also supported by the testimony of DW1 and PW16. The appellant Arun Kumar Gurjar had formally requested to stay the transfer of the appellant Baljeet Singh out of Range 29 as he was looking after the uploading of demand of Central Processing Centre which has to be completed by 31.12.2010 and other time barred matters vide letter dated 22.10.2010 Ex. PW16/DA.

Sh. M. P. Varshney Chief CIT also made similar request vide letter dated 27.10.2010 and Firoz Khan, CIT Delhi-10 *vide* letter dated 25.10.2010 Ex.PW14/DX also requested for permission till 31.03.2011 as transfer of appellant Baljeet Singh would adversely impact the office work of Range-29. The operation of order of transfer of the appellant Baljeet Singh was stayed till 31.10.2010 vide Ex. PW16/DA who was only providing limited clerical assistance to the appellant Arun Kumar Gurjar. The inference of conspiracy between the appellants Arun Kumar Gurjar and the Baljeet Singh cannot be based on the shaky ground that the appellant Baljeet Singh met the complainant PW1 in the room no. 207 which belonged to the appellant Arun Kumar Gurjar. The charge of conspiracy between the appellants Arun Kumar Gurjar and Baljeet Singh cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent and acceptable evidence and has to be proved beyond reasonable doubt which it has not been. The learned Senior Counsel for the appellant relied on **CBI V K. Narayanrao,** (2012) 9 SCC 512.

17.1 The learned Senior Counsel for the appellant Baljeet Singh argued that the appellant Baljeet Singh was assisting the appellant Arun Kumar Gurjar in concluding assessment proceedings in various cases which is not illegal or contrary to the practice and procedure adopted by the IT Department. The appellant Baljeet Singh was not the assessing officer and hence had no authority or power in the assessment and was not in position to show any favour to the firm of the complainant and was only assisting the assessing officer i.e. the appellant Arun Kumar Gurjar. The learned Senior Counsel referred letter dated 22.10.2010 Ex PW16/DX whereby the appellant Arun Kumar Gurjar requested CIT-X for staying the operation of order of transfer of the appellant Baljeet Singh till 31.03.2011 due to the reason that the appellant Baljeet Singh was looking after the uploading of demand on CPC to be completed by 31.12.2010 and other time barred matters and letter dated 25.10.2020 ExPW14/DX was sent by Firoz Khan CIT-X whereby requested the CIT-VI for continuation of the appellant Baljeet Singh in his place of posting in Range 29 of CIT-X till 31.03.2011. He also referred another letter dated 27.10.2010 of CCIT-VI whereby he forwarded the request of

ClT-X for allowing the appellant Baljeet Singh to continue in his present place of posting till 31.03.2011 for favourable consideration. He also referred testimonies of PW16 Ms Arju Garodia, DWl Shiv Swaroop Singh, Joint Commissioner of Income Tax and PW23.

17.2 The learned Special Public Prosecutor for CBI argued that there was criminal conspiracy between the appellants Arun Kumar Gurjar and Baljeet Singh as the appellant Baljeet Singh was assisting the appellant Arun Kumar Gurjar in the assessment case of MPVC and was rendering his services to the appellant Arun Kumar Gurjar even after his transfer from CIT-X and was writing order sheet of the case of the firm of complainant which were signed by the appellant Arun Kumar Gurjar and relied on opinion of expert from GEQD, Shimla. The Special Public Prosecutor further argued that it was not possible for the appellant Baljeet Singh to obtain illegal gratification from the complainant in the room no. 207, office of the appellant Arun Kumar Gurjar without connivance of the appellant Arun Kumar Gurjar. The Special Public Prosecutor defended the impugned judgment related to criminal conspiracy between the appellants Arun Kumar Gurjar and Baljeet Singh and stated that the trial court has rightly appreciated the evidence and convicted the appellants Arun Kumar Gurjar and Baljeet Singh for the offence punishable under section 120-B IPC read with section 7 of PC Act.

17.3 The trial court in relation to criminal conspiracy between the appellants Arun Kumar Gurjar and Baljeet Singh observed as under:-

> **34. In view of above discussion, testimony of witnesses, documents proved on record and the circumstances of the case it may be concluded that:-**
>
> **i) A-1 was posted as Joint Commissioner of Income Tax and A-2 as Inspector, Income Tax and this fact has not been disputed even by accused persons.**
>
> **ii) A-2 was assisting A-1 in the case of firm of the complainant even after the transfer.**
>
> **iii) Income tax assessment case of Madhya Pardesh Vanijaya Company, the firm of the complainant was pending before A-1 which was time bound case and the limitation was going to be expired on 31.12.2010.**
>
> **x) ….. In ordinary course of events, A-2 has noreason to call PWl to meet him in income tax office and no explanation has been given by A-2 in this regard.**
>
> **xi)A-2 met PWl in room no.207 of income tax office which was office room of A-1. In ordinary course of events there was no reason for A-2 to meet a litigant in the office of his senior officer (A-1) when A-1 himself was present in the same complex. It corroborates the story of prosecution.**
>
> **xii)A-l being the Joint Commissioner of Income Tax was the Assessing Officer of Income tax case of firm of PWl and A-2 was assisting him. In the' facts and circumstances of the case, A-2 could not demand bribe from PWl without**

instructions of A-1. A-2 himself was in no position to give any favour to firm of PWl without aid and help of A-1 which has clearly established the criminal conspiracy between A-1 and A-2 for demanding and accepting the bribe in lieu of favours in income tax assessment case of firm of PWl.

17.4 Section 120A of IPC defines **criminal conspiracy** which reads as under:

120A. Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done,—
(1) an illegal act, or
(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation. It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Section 120 B provides punishment for criminal conspiracy which reads as under:-

120B. Punishment of criminal conspiracy.--(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

The Supreme Court in **State through Superintendent of Police V Nalini & others,** (1999) 5 SCC 253 discussed and summarized ingredients to constitute a criminal conspiracy which are as follows:

i) Conspiracy is when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means.
ii) The offence of criminal conspiracy is an exception to the general law, where intent alone does not constitute crime. It is the intention to commit a crime and join hands with persons having the same intention.
iii) Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.
iv) Where in pursuance of the agreement, the conspirators commit offenses individually or adopt illegal means to do a legal act that has a nexus to the object of the conspiracy, all of them will be liable for such offenses even if some of them have not actively participated in the commission of those offenses.

The Supreme Court in **Yakub Abdul Razak Memon V State of Maharashtra,** (2013) 13 SCC 1 followed these principles and reiterated that to establish conspiracy it is necessary to establish an agreement between the parties and the offence of criminal conspiracy is of joint responsibility, all conspirators are liable for the acts of each of the crimes which have been committed as a result of the conspiracy. The Supreme Court again in **Sanjeev V State of Kerala,** Criminal Appeal No 1134 of 2011 decided on 09th November, 2023 and **Pavana Dibbur V The Directorate of Enforcement, Criminal Appeal No 2779 of 2023** decided on 29.11.2023 again referred these principles.

17.5 It is reflecting that the appellant Baljeet Singh was looking after the assessment case of the MPVC and even after his transfer continued to deal with assessment case of MPVC for assessment year 2008-2009 and was also writing the order sheets as reflected from the expert opinion from GEQD Shimla which were subsequently signed by the appellant Arun Kumar Gurjar. There was no specific order for attaching the appellant Baljeet Singh with the appellant Arun Kumar Gurjar. The prosecution also alleged that the complainant was called by the appellant Baljeet Singh in the room of the appellant Arun Kumar Gurjar and the appellant Baljeet Singh in the ordinary course could not have demanded bribe from the complainant PW1 without the instructions of the appellant Arun Kumar Gurjar and further the appellant Baljeet Singh was also not in official position to favor the complainant PW1 in hassle free disposal of assessment case of the firm of the complainant namely MPDC for the assessment year 2008-2009. The trial court also agreed with this stand of the prosecution as well as the arguments advanced by the Special Public Prosecutor.

17.6 It is correct that the conspiracy are conceived and executed in privacy and it is very difficult to establish conspiracy by direct evidence. The existence of the conspiracy has to be inferred from the prevailing circumstances as well as the conduct of the accused. However in present case, the mere facts that the appellant Baljeet Singh was assisting the appellant Arun Kumar Gurjar in assessment case of the MPVC which was to be expired on 31.12.2010 even after his transfer and if the appellant Baljeet Singh met with the complainant PW1 in the office of the appellant Arun Kumar Gurjar and the appellant Baljeet Singh was writing the order sheet under the signature of the appellant Arun Kumar Gurjar as confirmed by the expert opinion are not itself sufficient to establish an agreement between the appellants Arun Kumar Gurjar and Baljeet Singh and prior meeting of mind. The observations as given by the trial court in the impugned judgment are based on the presumption and assumption rather the true appreciation of the evidence. There is no force in the arguments advanced by the Special Public Prosecutor for the Respondent/CBI that the facts as mentioned hereinabove are sufficient to constitute conspiracy between the appellant Arun Kumar Gurjar and Baljeet Singh. The respective learned Senior Counsels for the appellants Arun Kumar Gurjar and Baljeet Singh have rightly argued that there are no sufficient evidences to establish the conspiracy between the appellant Arun Kumar Gujjar and Baljeet Singh for demanding and accepting bribe as alleged by the complainant PW1. The prosecution has failed to establish existence of conspiracy between the appellants Arun Kumar Gurjar and Baljeet Singh. The appellants Arun Kumar Gurjar and Baljeet Singh should not have been convicted for the offence punishable under section 120B IPC read with section 7 of the PC Act.

18. It is accepted legal proposition that proof of demand and acceptance of the gratification is a *sine qua non* to constitute offence punishable under section 7 of the PC Act and presumption under section 20 of the PC Act can be invoked only on proof of demand of gratification by the accused and the acceptance thereof. The offence under Section 7 cannot be established unless demand and acceptance are established. It is also accepted legal proposition that mere acceptance of any illegal gratification or recovery thereof in the absence of proof of demand would not be sufficient to bring home the charge under Sections 7 of the PC Act. However an accused can be convicted for offence of demanding a bribe or illegal gratification under the PC Act on circumstantial evidence in the absence of direct oral and documentary evidence. It was observed by the Supreme Court in **State of Punjab V Madan Mohan Lal Verma,** (2013) 14 SCC 153 as under which was also cited by the learned Senior Counsel for the appellant Arun Kumar Gurjar:-

> **10. It is a settled legal proposition that in exceptional circumstances, the appellate court for compelling reasons should not hesitate to reverse a judgment of acquittal passed by the court below, if the findings so recorded by the court below are found to be perverse, i.e. if the conclusions arrived at by the court below are contrary to the evidence on record; or if the court's entire approach with respect to dealing with the evidence is found to be patently illegal, leading to the miscarriage of justice; or if its judgment is unreasonable and is based on an erroneous understanding of the law and of the facts of the case. While doing so, the appellate court must bear in mind the presumption of**

innocence in favour of the accused, and also that an acquittal by the court below bolsters such presumption of innocence. (Vide: Abrar v. State of U.P., AIR 2011 SC 354; Rukia Begum v. State of Karnataka, AIR 2011 SC 1585; and State of Madhya Pradesh v. Dal Singh & Ors., AIR 2013 SC 2059).

11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act 1988. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person. (Vide: Ram Prakash Arora v. The State of Punjab AIR 1973 SC 498; T. Subramanian v. The State of T.N., AIR 2006 SC 836; State of Kerala & Anr. v. C.P. Rao,

(2011) 6 SCC 450; and Mukut Bihari & Anr. v. State of Rajasthan, (2012) 11 SCC 642).

18.1 The learned Senior Counsels for the appellant Arun Kumar Gurjar argued that the prosecution has failed to prove the twin requirements of demand and acceptance which are necessary to constitute the offence punishable under section 7 of the PC act. He further argued that the only evidence of alleged demand stated to be made by the appellant Arun Kumar Gurjar is the complaint Ex. PW1/B filed by the complainant PW1 and the filing of the complaint with the respondent/CBI by the complainant PW1 cannot be taken as substitute for the evidence of proof of allegation and the reliance was placed on **F. RoshanLal Saini V CBI**, (2010) SCC online Del 3573. It is further argued that the complainant PW1 was unreliable witness whose testimony is full of contradictions and improvements. The trial court in the impugned judgment also observed that the testimony of the PW1 suffers from contradictions, improvements and deficiency and he may be an interested witness and due to this reason the trial court further observed that the testimony of the complainant PW1 is required to be scrutinized with caution. The trial court observed that the testimony of PW 1 is not fully reliable but required to be seen in the facts of the case and may be acted upon material facts if it is corroborated with some other material facts of the case. It was further argued that there was no corroboration of any allegation made by the complainant PW1 by any document or any witness and the appellant Arun Kumar Gurjar was convicted on the testimony of the complainant PW1 despite being unreliable and referred **K.Ramadoss & another V Deputy Superintendent of police,** (2019) SCC online Mad 16566 and **State of Punjab V Madan Mohan Lal Verma,** (2013) 14 SCC 153.

18.1.1 The learned Senior Counsel for the appellant Arun Kumar Gurjar further argued that the complainant PW1 in deposition has changed his stand regarding the demand of bribe of Rs. 5 lacs and pointed out that the complainant PW1 in the complaint Ex PW1/B stated that the appellants Arun Kumar Gurjar and Baljeet Singh demanded bribe of Rs. 5 lacs for hassle free completion of tax assessment while in the statement under section 161 of the code Ex. PW1/DA stated that Rs. 2.5 lacs was demanded by the appellant Baljeet Singh. The complainant PW1 in examination in chief also changed his stance by deposing that the appellant Baljeet Singh has made initial demand of Rs. 1.5 Lacs which was increased to Rs. 5 lacs when he met the appellants Arun Kumar Gurjar and Baljeet Singh at the end of the October 2010 in the office of the appellant Arun Kumar Gurjar. The learned senior counsel further argued that the allegations of demand in October and December 2010 as made by the complainant PW1 are vague, unclear and inherently improbable. The learned senior counsel argued that there is no proof of acceptance by the appellant Arun Kumar Gurjar and no recovery was affected from the appellant Arun Kumar Gurjar and he was not caught while taking any bribe from the complainant PW1. The recovery memo PW1/G does not make any conclusive or direct finding against the appellant Arun Kumar Gurjar. The recovery of Rs 6 lakhs from the drawer of the office of the appellant Arun Kumar Gurjar as alleged by the prosecution is totally irrelevant for the purpose of the present case. Ultimately, the learned senior counsel for the appellant Arun Kumar Gurjar argued that as no recovery was affected from the appellant Arun Kumar Gurjar in the entire incident as such no presumption under section 20 of the PC act regarding acceptance of bribe can be drawn against the appellant Arun Kumar Gurjar.

18.2 The learned senior counsel for the appellant Baljeet Singh argued that the prosecution has failed to prove initial demand which is *sine qua non* for convicting an accused for offence under section 7 of the PC Act. It is submitted that the complainant PW1 only made allegation of initial demand of Rs 5 lakhs in complaint EX. PW1/A which is contradictory to deposition of PW1 in the examination in chief. The complainant during his examination in chief recorded on 03.06.2013 has introduced for the first time the initial demand of Rs. 1.5 lakh by the appellants Arun Kumar Gurjar and Baljeet Singh. The complainant during his cross examination introduced the demand of Rs 2.5 lacs alleged to have been made in the month of October 2010. It is argued that the testimony of the complainant PW1 has material contradictions, improvements and was an interested witness and relied upon **Muktar Singh V State of Punjab** (2017) 8 SCC 136.

18.2.1 The learned senior counsel for the appellant Baljeet Singh regarding the demand made in December 2010 argued that the complainant introduced the demand of Rs 5 lakhs for the first time on 22/23.12.2010 and on 27.12.2010 which remain uncorroborated by any substantive piece of evidence. It is further argued that the onus to prove subsequent demand was on the prosecution which is *sine qua non* for constituting an offence under section 7 of the PC Act. There is no evidence to prove demand at this point. The PW10 and PW18 did not depose about the demand as the amount was already recovered when they entered the room 207. The learned senior counsel relied upon **P Satyanaryana Murthy V District Inspector of police state of Andra Pradesh (2015) 10SCC, B. Jayaraj V State of Punjab 2017.**

18.3 The learned Special Public Prosecutor for the respondent/CBI argued that the appellants Arun Kumar Gujjar and Baljeet Singh have demanded illegal gratification of Rs. 5 lacs in the month of October 2010 from the complainant PW1 which was again demanded on 27.12.2010 when the complainant again visited the office on 27.12.2010 to finalize the assessment case of the MPVC without any hurdle. The appellant Baljeet Singh has accepted illegal gratification of Rs 2 lakhs on 29.12.2010 from the complainant for himself as well as on behalf of the appellant Arun Kumar Gujjar and the said amount was recovered from the possession of the appellant Baljeet Singh. The complainant being the only witness of demand and acceptance has consistently supported the allegation and his testimony can't be impeached on these aspects which inspire confidence and find corroboration from circumstantial evidence. The recovery of bribe amount from the appellant Baljeet Singh was supported by the testimony of the complainant PW1, Jitender Bharadwaj PW 18 and TLO Ram Singh PW 22. There was no motive on the part of the complainant PW1 and PW 22 TLO Ram Singh to falsely implicate the appellants Arun Kumar Gujjar and Baljeet Singh and Hukum Chand PW 10 and Jitender Bhardwaj PW 18 were the independent witnesses. The prosecution has proved essential ingredients of offence i.e. demand of bribe by the appellants and acceptance of bribe by the appellant Baljeet Singh from the complainant and thereafter recovery of bribe amount from the possession of the appellant Baljeet Singh.

18.4 The complainant PW1 in the complaint Ex. PW1/A stated that he is one of the partner of MPVC along with his brother Anil Jindal and Income Tax Assessment for the financial year 2008-09 pertaining to the MPVC was under scrutiny and was pending in the office of the appellant Arun Kumar Gujjar, Joint Commissioner of Income Tax, Ward 29 being the assessing officer. The complainant further stated that he received various notices from the department and accordingly submitted necessary documents/information to the appellant Arun Kumar Gurjar to finalize the scrutiny. The appellant Bajleet Singh who was a subordinate officer of the appellant Arun Kumar Gurjar also remained present during the meetings. The complainant PW1 on being asked by the appellants Arun Kumar Gurjar and Baljeet Singh met them in the month of October 2010 in the office of the appellant Arun Kumar Gurjar. The appellants Arun Kumar Gurjar and Baljeet Singh demanded bribe of Rs. 5 lacs to finalize the scrutiny without any hurdle but the complainant PW1 refused to pay the bribe of Rs. 5 lacs. Thereafter, the appellant Arun Kumar Gurjar on 20.12.2010 issued a notice to MPVC which was replied on 24.12.2010. The complainant PW1 on 27.12.2010 again visited the office of the appellant Arun Kumar Gurjar where the appellants Arun Kumar Gujjar and Baljeeet Singh demanded Rs 5 lacs to finalize the scrutiny but the complainant PW1 was hesitant to pay the bribe. Accordingly, he made the complaint Ex. PW1/A to the SP,CBI ACU-1, New Delhi.

18.4.1 The complainant PW1 in his testimony deposed that the appellants Arun Kumar Gurjar and Baljeet Singh were dealing income tax assessment of MPVC for the assessment year 2008-2009 and due to this reason he used to meet the appellants Arun Kumar Gurjar and Baljeet Singh. The complainant in October, 2010 in response to the notice received from the income tax office met the appellant Baljeet Singh in his office and submitted further documents. The complainant again met the appellant Baljeet Singh in the mid of December, 2010 in his office and thereafter the appellant Baljeet Singh took him to the office of the appellant Arun Kumar Gurjar where the discussion was held pertaining to the assessment of MPVC. The appellant Arun Kumar Gurjar was not satisfied with the reply/information given by the complainant then he came out from the office of the appellant Arun Kumar Gurjar and met the appellant Baljeet Singh who demanded bribe of Rs. 5 lacs to settle the case which was to be paid to the appellant Arun Kumar Gurjar. The complainant PW1 also deposed that when he met the appellant Baljeet Singh in October, 2010 then he demanded bribe of Rs.1.5 lacs which was increased to Rs. 5 lacs in the month of December, 2010. The appellant Baljeet Singh also demanded Rs. 5 lacs from the complainant PW1 on 22/23 December and he requested the appellant Baljeet Singh to settle the case for lesser demand which was not considered by the appellant Baljeet Singh. The complainant again met the appellant Baljeet Singh in his office on 27.12.2010 in pursuance of the notice received from the office of appellant Arun Kumar Gurjar but the appellant Baljeet Singh did not agree to settle the case of MPVC for lesser demand of bribe. Accordingly the complainant lodged the complaint Ex. PW1/A in the office of CBI. The complainant on 29.12.2010 reached at CBI office where he met TLO Ram Singh PW22 where independent witnesses namely Jitender Bhardwaj and Hukum Chand were also present. The complainant PW1 was instructed by TLO Ram Singh PW22 to call the person who was demanding the bribe. The complainant PW1 contacted the appellant Baljeet Singh and conveyed him that he would be coming to his office at about 02:00 pm to pay Rs. 2 lacs which was also accepted by the appellant Baljeet Singh. The conversation was recorded and was transferred to a CD and verification memo vide Ex. PW1/D was also prepared. The handing over memo Ex. PW1/E was also prepared on 29.12.2010 as a part of pre trap proceedings conducted in the CBI office on 29.12.2010.The complainant PW1 along with members of the trap team reached in the office of appellant Baljeet Singh and on inquiry he was found to be sitting in the office of the appellant Arun Kumar Gurjar. Thereafter the complainant PW1 reached in the office of appellant Arun Kumar Gurjar where the appellant Baljeet Singh was present but the appellant Arun Kumar Gurjar was not there. The complainant handed over the envelope containing GC notes of Rs. 2 lacs to the appellant Baljeet Singh which was accepted by him and thereafter they came out from the room of the appellant Arun Kumar Gurjar. The appellant Baljeet Singh was apprehended by TLO Ram Singh PW22 and other members of the trap team after pre decided signal was given by the complainant PW1 and thereafter an envelope containing the GC notes which was stated to be accepted by the appellant Baljeet Singh were recovered. The post Trap proceedings were also conducted. The complainant PW1 also deposed that the appellant Arun Kumar Gurjar was also brought by TLO Ram Singh PW22 from the office of Firoz Khan, Commissioner of Income Tax and the appellant Baljeet Singh in the presence of appellant Arun Kumar Gurjar told CBI officers that he accepted Rs. 2 lacs on the instructions of the appellant Arun Kumar Gurjar. The complainant PW1 in examination in chief recorded on 04.06.2013 before the trial court also deposed that he knew the appellant Baljeet Singh since 2010 and he received a phone from the appellant Baljeet Singh in the first week of October, 2010 who informed him about his assessment case of MPVC under scrutiny. Thereafter, the complainant PW1 met the appellant Baljeet Singh who has taken him to the office of the assessing officer i.e. the appellant Arun Kumar Gurjar. The complainant PW1 again met the appellant Arun Kumar Gurjar in his office at the end of the October, 2010 i.e., around 25/26.10.2010 and in the said meeting the appellant Arun Kumar Gurjar and Baljeet Singh demanded Rs. 5 lacs against the initial demand of Rs. 1.5 lacs. The appellants Arun Kumar Gurjar and Baljeet Singh again demanded Rs. 5 lacs to finalize scrutiny of the assessment of the MPVC in December, 2010.The prosecution also examined Hukum Chand who was a member of Trap team as PW10 who could not identify properly the appellant Baljeet Singh as the person who was caught by the CBI officials. PW10 Hukam Singh also deposed that the currency notes were already recovered by the CBI officials when he reached the room. The prosecution also examined Jitender Bhardwaj who was the member of trap team being the independent witness as PW 18 and TLO Ram Singh as PW22.

18.5 The testimony of the complainant as PW1 reflected that the appellants Arun Kumar Gurjar and Baljeet Singh demanded bribe of Rs.5 lacs to finalize the scrutiny without any hurdle which the complainant PW1 has refused to pay. The complainant PW1 on 27.12.2010 also visited the office of the appellant Arun Kumar Gurjar where the appellants Arun Kumar Gurjar and Baljeet Singh have again demanded a bribe of Rs.5 lacs to finalize the scrutiny. The complainant PW1 in his examination in chief recorded on 04.06.2013 before the trial court deposed that he was taken to the office of the appellant Arun Kumar Gurjar by the appellant Baljeet Singh in the first week of October, 2010 and thereafter he again met the appellant Arun Kumar Gurjar at the end of October, 2010 where the apppellants Arun Kumar Gurjar and Baljeet Singh demanded Rs.5 lacs against the initial demand of Rs1.5 lacs. The complainant PW1 did not speak or depose anything about the initial demand of Rs.1.5 lakh in the early part of his examination in chief. The complainant in complaint Ex. PW1/A mentioned that the appellants Arun Kumar Gurjar and Baljeet Singh demanded bribe to finalize the scrutiny and thereafter, the demand was raised by the appellants Arun Kumar Gurjar and Baljeet Singh for Rs.5 lacs on 27.12.2010. The complainant in Ex.PW1/A did not mention the initial demand of Rs.1.5 lacs alleged to have been made in October, 2010 which was increased to Rs.5 lakhs in the month of December, 2010. There are various other contradictions and improvements in the testimony of PW1 which was also observed by the trial court in para no 16.6 of the impugned judgment to the effect that the testimony of the complainant PW1 is suffering from contradiction and improvements on different aspects of the prosecution case but simultaneously also observed that the complainant PW1 has supported the prosecution on material allegations. The trial court also observed that keeping in view the fact that the testimony of the complainant PW1 suffers from contradictions, improvements and deficiency and he may be an interested witness and his testimony is required to be scrutinized with caution. It was further observed that the testimony of PW1 cannot be said wholly reliable or wholly unreliable but was required to be seen in the facts and circumstances of the case. It is correct that mere marginal variations, contradictions, discrepancies or improvements in the statements of witnesses cannot be fatal to the case of the prosecution and only major contradictions, discrepancies or improvements on material facts can shake the very genesis of prosecution case and can create doubts as to the prosecution case. It is appearing that the trial court was not convinced with the purity and credibility of the testimony of the complainant PW1 and also noted various contradictions, improvements about the prosecution case.

19. The complainant PW1 made the complaint Ex. PW1/A on 28.12.2010 with the CBI and on that day verification of the complaint was done by TLO PW 22 Ram Singh. The trial court already observed that the conversation for verification of the complaint recorded in CD Q 1 cannot be read into evidence. The respondent CBI after verification has registered the present FIR and thereafter, the post trapping proceedings were conducted. The PW1 complainant only deposed that on 29.12.2010 he contacted the appellant Baljeet Singh through his mobile phone and told him that the complainant/PW1 shall be visiting to his office at about 2.00 pm to pay Rs.2 lacs to settle the income tax case of MPVC which was accepted by the appellant Baljeet Singh. It is reflecting from this part of the testimony of the complainant PW1 that the appellant Baljeet Singh did not make any demand of the bribe on 29.12.2010 but the complainant PW1 himself stated that he would be coming to the income tax office to meet the appellant Baljeet Singh. The testimony of the complainant PW1 also reflected that after completion of pre-trap proceedings at the CBI office, the trap team left the CBI office at 1:00 pm and reached in the income tax office where he came to know that the appellant Baljeet Singh was sitting inside the office room of the appellant Arun Kumar Gujjar. It is also reflecting that he discussed has assessment case with the appellant Baljeet Singh and thereafter, took out the envelope containing GC notes of Rs.2 lacs from the pocket and handed over the same to the appellant Baljeet Singh which was accepted by him. Again, this part of the testimony of the complainant PW1 did not specifically reflects that even on 29.12.2010 the appellant Baljeet Singh PW1 has made specific demand of bribe either of Rs. 5 lakhs or Rs.2 lakhs from the complainant and it is only reflected that he handed over an envelope containing GC notes of Rs.2 lakhs to the appellant Baljeet Singh which was accepted but the appellant Baljeet Singh. It is also reflected that thereafter appellant Baljeet Singh on pre decided signal, the trap team led by TLO/Ram Singh PW22 has apprehended the appellant Baljeet Singh and GC notes of Rs.2 lacs were recovered from his possession and subsequent proceedings were also conducted. It is also reflecting that at that time the appellant Arun Kumar Gurjar was not present along with the appellant Baljeet Singh and the complainant PW1 and he was not found in the possession of the GC notes of Rs.2 lacs stated to be kept in an envelope. Therefore, as such there is no direct and specific evidence that on 29.12.2010 either of the appellants Arun Kumar Gurjjar and Baljeet Singh have demanded bribe of Rs.2 lacs or Rs.5 lacs from the complainant PW1 and thereafter, the bribe was accepted by the appellant Arun Kumar Gurjar. The testimony of the complainant PW1 and other witnesses only reflects that GC notes of Rs.2 lacs were recovered from the possession of the appellant Baljeet Singh. It is also pertinent to mention that none of the witnesses i.e. PW10 Hukum Chand, PW18 Jitender Bhardwaj PW 22 TLO/Ram Singh were present when the complainant PW1 stated to have delivered an envelope containing GC notes of Rs.2 lacs. The testimony of the complainant PW1 is only establishing that on 29.12.2010, the appellant Baljeet Singh accepted GC notes of Rs.2 lacs from the complainant PW1 which was subsequently recovered from his possession as reflecting from the testimony of other witnesses examined by the prosecution. The testimony of the complainant PW1 is also not inspiring confidence. The trial court also raised doubts about credibility of testimony of the complainant PW1. There is legal and factual force in arguments advanced by the learned Senior Counsels for the appellants Arun Kumar Gurjar and Baljeet Singh that the prosecution has failed to prove twin requirements of demand and acceptance of bribe which are necessary ingredients to prove offence under section 7 of the PC Act. The arguments advanced by learned Senior Public Prosecutor for the respondent/CBI are not legally convincing.

20. In view of the above discussion, the prosecution has failed to prove the acceptance of the tainted money by the appellant/Arun Kumar Gurjar and substantial doubts are appearing from the evidence led by the prosecution as to the guilt of the appellant Baljeet Singh. Accordingly, the appeals are allowed. The impugned judgment and impugned order passed by the trial court are set aside and appellants are acquitted for the offence for which they were charged. If the appellants Arun Kumar Gurjar and Baljeet Singh have deposited any fine in terms of impugned order, they are entitled for refund of fine.

21. The present appeals stand disposed of along with pending applications, if any.

DR. SUDHIR KUMAR JAIN
(JUDGE)

MARCH 22, 2024
sk/j/am/abk