



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 12 OF 2019

Ravindra s/o Jyotiram Bhojne,
Aged about 42 years, Occupation – Service,
R/o Sai Nagar, Tahsil Road, Telhara,
Tq. Telhara, District Akola.

... Appellant

// VERSUS //

Central Bureau of Investigation,
through Superintendent of Police, ACB,
Nagpur.

... Respondent

WITH

CRIMINAL APPEAL NO. 114 OF 2019

Mohammad Salim s/o Mohammad Hanif,
Aged about 36 years, Occupation – Business,
R/o Mahadevpura, Ward No. 15, Wardha,
Tahsil & District Wardha.

... Appellant

// VERSUS //

The Central Bureau of Investigation,
through Superintendent of Police,
Anti-Corruption Bureau, Taluka & District
Nagpur.

... Respondent

Mr. Prakash Naidu with Mr. J.D. Bastian, Advocate for the appellant in Appeal No. 12/2019,
Mr. J.R. Kidilay, Advocate for appellant in Appeal No. 114/2019,
Mr. P.K. Sathianathan, Counsel for the respondent/State.

CORAM : NIVEDITA P. MEHTA, J.

Reserved on : 17th November, 2025.

Pronounced on : 02nd December, 2025.

COMMON JUDGMENT :

The appellants have preferred the present appeals being aggrieved by the judgment and order dated 14th December 2018, passed by the learned Sessions Judge, Wardha, in Special Criminal CBI ACB Case No. 7/2010, whereby they are convicted for the offences punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the *Prevention of Corruption Act, 1988* (hereinafter, “the PC Act”), as well as under Section 120-B of the *Indian Penal Code* (hereinafter, “IPC”).

2. By the said judgment, appellant—Ravindra Bhojne in Criminal Appeal No. 12/2019 and appellant-Mohammad Salim in Criminal Appeal No. 114/2019 are convicted under Section 7 of the PC Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹1,000, and in default, to suffer simple imprisonment for one month each. They are further convicted for the offence under Section 13(1)(d) read with Section 13(2) of the PC Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹1,000, and in default, to suffer simple imprisonment for one month each.

3. The appellants are also convicted for the offence punishable under Section 120-B IPC and sentenced to undergo rigorous imprisonment for one year and to pay

a fine of ₹500, and in default, to suffer simple imprisonment for one month each. All substantive sentences were directed to run concurrently.

4. Since both the appellants have preferred appeals challenging the aforesaid judgment and order, Criminal Appeal Nos. 12 of 2019 and 114 of 2019 were heard together.

5. During the pendency of the trial, accused No. 1, Sunil s/o Gorakhnath Chahande, expired on 01.03.2012, and consequently, the proceedings against him stood abated. The judgment and order of conviction and sentence dated 14.12.2018 are thereafter challenged by the remaining accused persons i.e. the appellants by way of the present appeals.

6. The prosecution case, in brief, is as follows:

The complainant, Parvez Khan was engaged in an unlicensed business of selling food items to passengers on trains plying between Badnera and Wardha Railway Stations. He employed five boys for this purpose. Accused No. 1, an RPF Inspector, and Accused No. 2, an RPF Constable posted on the said route, allegedly demanded a monthly “hafta” of ₹300 per employee, amounting to ₹1,500 per month, for permitting continuation of the complainant’s unlicensed activity. A third person, Accused No. 3, a fruit vendor at Wardha Railway Station, was also implicated, though the initial demand is attributed to Accused Nos. 1 and 2.

6.1. On 14.09.2010, the complainant contacted Accused No. 2 to resolve the harassment and illegal demand. Accused No. 2 confirmed the demand of ₹1,500 per month and instructed the complainant to meet him at Wardha on 15.09.2010, stating that he would take the complainant to Accused No. 1 for negotiation. When the complainant refused to comply, he and his employees were allegedly subjected to harassment.

6.2. Consequently, the complainant approached the CBI, ACB Nagpur, and lodged a written complaint detailing the demand. The CBI registered RC0282011A0014 (Exh. 102) against Accused Nos. 1 and 2. To verify the allegations, the complainant was asked to make a phone call to Accused No. 2. The CBI officers overheard the conversation on 15.09.2010 at about 10:58 a.m., wherein Accused No. 2 directed the complainant to meet him near a tea stall outside Wardha Railway Station.

6.3. A verification exercise was thereafter conducted. The complainant, equipped with a concealed voice recorder, attempted to meet Accused No. 2 at the tea stall, but was redirected telephonically to a location near the Railway Colony. During the meeting, Accused No. 2 enquired whether the complainant had brought the amount demanded by Accused No. 1. When the complainant sought reduction of the “hafta,” Accused No. 2 stated he would attempt to negotiate but demanded an additional ₹200 per month for himself.

6.4. Both then proceeded to the quarters of Accused No. 1. The complainant again sought reduction of the monthly amount. The complainant then requested to increase the number of employees from five to seven. Accused No. 1 initially demanded ₹500 per employee (₹3,500 for seven employees), but after negotiation, agreed to accept ₹1,500 per month for seven employees. He instructed the complainant to deposit the amount either with Accused No. 2 or Accused No. 3. However, Accused No. 2 insisted that the money be handed over only to him.

6.5. Based on the recorded conversations, the CBI concluded that Accused Nos. 1 and 2 had demanded a bribe of ₹1,500 for Accused No. 1 and ₹200 for Accused No. 2, totalling ₹1,700, to be collected through Accused Nos. 2 and 3. A verification panchanama was prepared. A trap was then arranged for the total bribe amount of ₹1,700. The currency notes, treated with phenolphthalein powder, were kept in the complainant's shirt pocket. He was instructed not to touch the money unless demanded and to give a pre-arranged signal by wiping his hair after handing over the money. A pre-trap panchanama was drawn.

6.6. Upon calling Accused No. 2 for arranging payment, the complainant was directed to deliver the bribe to Accused No. 3 at his fruit stall at Wardha Railway Station. The complainant accordingly went to the stall and handed over the amount of ₹1,700 to Accused No. 3, informing him that ₹1,500 was for Accused No. 1 and ₹200 for Accused No. 2. Accused No. 3 accepted the money with his right hand,

counted it with both hands, and kept it in his left shirt pocket. The complainant then gave the signal.

6.7. The CBI officers immediately apprehended Accused No. 3, after washing; both his hands and his left shirt pocket tested positive for phenolphthalein, turning the sodium carbonate solution pink, and the solutions were seized. The tainted currency notes were recovered and tallied with the pre-trap panchanama.

6.8. Accused No. 3, at the instance of the CBI, made phone calls to Accused No. 2 and the deceased Accused No. 1 on loudspeaker, confirming receipt of the money. The complainant also called Accused No. 2, confirming payment of ₹1,500 for Accused No. 1 and ₹200 for himself. These conversations were recorded and transcribed. Accused Nos. 1, 2, and 3 were thereafter arrested.

7. Pursuant to investigation, a charge-sheet was filed before the learned Sessions Judge, who framed Charges vide Exhibit 35 against the appellants for offences punishable under Section 7, Section 13(2) read with Section 13(1)(d) of the PC Act, and Section 120-B IPC. The appellants pleaded not guilty and claimed to be tried. The trial commenced and culminated in their conviction and sentence as noted earlier.

8. In support of its case, the prosecution examined all ten witnesses, namely –

1. P.W.1 – Vijay Khatarkar, who was the Sanctioning authority, his deposition was brought on record through Exhibit 77;

2. P.W.2 – Parwez Khan, who was the complainant, his deposition was brought on record as Exhibit 82;
3. P.W.3 – Ajay Wanjari, who is a shadow witness, his deposition brought on record through Exhibit 92;
4. P.W.4 – Hanuman Jangir, who is a shadow witness, his deposition brought on record through Exhibit 101;
5. P.W.5- Denis Mathew, his deposition brought on record through Exhibit 107;
6. P.W.6- Dilip Wakhare, his deposition brought on record through Exhibit 108;
7. PW. 7Rajvilas Walde's deposition brought on record through Exhibit 110;
8. P.W. 8 Dr. Subrat Chaudhari, his deposition brought on record through Exhibit 114;
9. P.W. 9 Kishor BBhagat's deposition was brought on record through Exhibit 116; and
10. PW. 10 Krishna Kumar Sigh deposition was brought on record through Exhibit 123.

9. In addition to the oral evidence, the prosecution relied upon the following documentary evidence: the complaint (Exhibit 83); the sanction order (Exhibit 78); the transcript of the conversation between the complainant and the accused (Exhibit 93); the verification panchanama (Exhibit 94); the pre-trap panchanama (Exhibit 95); the post-trap panchanama (Exhibit 96); the transcript of the trap-related

conversation (Exhibit 97); the spectrographic report (Exhibit 115); and the Chemical Analyser's Report (Exhibit 124).

10. Upon appreciation of the oral and documentary evidence on record, the learned Sessions Judge held that the prosecution evidence was credible and trustworthy. The Court recorded a finding that the deceased accused No. 1 had demanded a monthly hafta/bribe of ₹1,500, and accused No. 2 had demanded an additional ₹200 per month from the complainant for permitting him to carry on the business of selling food to passengers on trains between Badnera and Wardha Railway Stations through his seven employee-boys without a licence. It was further held that the said bribe amount was accepted through accused No. 3 at the date, time, and place alleged.

11. The learned Sessions Judge also concluded that accused Nos. 1, 2, and 3 had entered into a criminal conspiracy to demand and accept a total hafta/bribe of ₹1,700 from the complainant. The prosecution was found to have proved its case beyond reasonable doubt against accused Nos. 2 and 3 for the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the *Prevention of Corruption Act, 1988*, as well as under Section 120-B IPC, and they were sentenced accordingly.

12. Heard learned counsel Shri Prakash Naidu and Shri J.R. Kidilay for the appellants, and learned Counsel Shri Prakashkumar Sathianathan for the respondent–CBI.

13. The learned counsel for the appellants advanced the following submissions:

13.1. It was contended that Accused No. 3 was a licensed contractor for selling fruits and food at Wardha Railway Station, whereas the complainant was engaged in selling food articles on running trains between Wardha and Badnera. The complainant used to purchase fruits and food items from Accused No. 3 on credit, and on the date of the alleged incident, Accused No. 3 had merely received the amount towards the complainant's outstanding dues. It was urged that Accused No. 3 had no nexus with the alleged trap or the alleged illegal transaction.

13.2. It was submitted that the prosecution failed to fulfil the foundational requirements for the admissibility of tape-recorded evidence. Without undertaking the necessary examination on admissibility, the learned Sessions Judge erroneously treated the recorded material as proved against the appellants.

13.3. It was argued that the conversation between the complainant and Accused No. 3 allegedly took place at the latter's fruit stall, where the shadow witness was not present. The testimony of the complainant regarding this conversation is

uncorroborated. Hence, the recovery of currency allegedly from Accused No. 3 is neither credible nor legal.

13.4. Learned Counsel contended that the prosecution failed to establish that PW-1, the Additional Chief Security Commissioner, had accorded sanction after due application of mind. It was submitted that the sanctioning authority did not examine all relevant materials such as the FIR, complaint, CFSL report, and transcripts, thereby rendering the sanction invalid.

13.5. It was further submitted that the prosecution failed to establish the essential element of *demand* through clear, cogent, and incriminating evidence. It was contended that no unbroken chain of circumstances was established to prove that the appellants demanded illegal gratification.

13.6. It was contended that the shadow witness did not accompany the complainant to the actual spot of demand. No explanation was offered for the investigating officer's failure to position the shadow witness at the scene, despite procedural requirements under the CBI Manual. This omission, according to the appellants, vitiates the prosecution case.

13.7. The appellants argued that the audio recordings were not collected or produced in accordance with the provisions of the Indian Evidence Act, Rule for production, Use and the Recording of the tape-recorded evidence 1978, governing

tape-recorded evidence and section 24 of the Criminal Manual. According to appellant's Counsel, it was incumbent on the prosecution to take reasonable steps. The prosecution failed to seize the mobile phones or SIM cards of the complainant and the accused, to obtain CDR/SDR/CAF records, or to ensure integrity of the recording. It was submitted that standard protocol to ensure that the audio recording was unaltered was not followed, and hence, the recordings cannot be relied upon.

13.8. It was further argued that no certificate under Section 65B of the Evidence Act was produced in support of the transcripts. The prosecution did not identify the person who prepared the transcripts or explain how the transcripts were generated. Being secondary evidence, the transcripts were not verified in court by playing and comparing the audio files.

13.9. The appellants lastly submitted that the prosecution failed to produce the original DVR/cassette containing the primary electronic evidence. In the absence of the original electronic medium, authenticity, continuity, and integrity of the alleged recording cannot be established. It was submitted that the possibility of editing, fabrication, or selective extraction could not be ruled out. The absence of hash value verification further weakens the prosecution case. Hence, in the absence of primary evidence and valid certification, the alleged recordings cannot be relied upon, and the prosecution has failed to prove the guilt of the appellants beyond reasonable doubt.

13.10. In support of these submissions, reliance was placed upon several judicial pronouncements, including: *State v. Uttamchand Bohra* (2022) 16 SCC 663; *Ram Sharan Chaturvedi v. State of M.P.*, (2022) 16 SCC 166; *Mir Mustafa Ali Hasmi v. State of A.P.*, 2024 INSC 503; *Rakesh Kapoor v. State of H.P.*, (2012) 13 SCC 552; *Prakash Babulal Pardeshi v. State of Maharashtra*, 2020 (1) Bom CR (Cri) 743; *State of Maharashtra v. Ramesh Tukaram Wagh*, 2021 (1) AIR Bom R (Cri) 318; *Rahil v. State (NCT of Delhi)*, 2025 INSC 858; *Rajesh Gupta v. CBI*, 2022 SCC OnLine SC 1107; *Vijaykumar Raghunath Gosavi v. State of Maharashtra*, 2021 (3) AIR Bom R (Cri) 647; *Ramesh Thete v. State of M.P.*, 2011 (6) RCR (Cri) 1892; *Mohd. Abdul Naim v. State of Maharashtra*, Cr. A. No. 277/2005; *Vinayak v. State of Maharashtra*, 2023 (1) AIR Bom R (Cri) 28; *K.C. Singh v. CBI, Delhi* Cr. A. No. 976/2010; *Shobha Sonba Raut v. State of Maharashtra*, 2022 (3) AIR Bom R (Cri) 395; *State of Lokayuktha Police v. C.B. Nagaraj*, 2025 INSC 736; *Harishchandra Prabhakar Borkar v. State of Maharashtra*, 2017 (3) AIR Bom R (Cri) 763; *State of Maharashtra v. Shivram Bhikaji Pawar*, 2011 (2) AIR Bom R 684; *K.M. Mallaiah v. State of Karnataka*, Cr. A. No. 260/2015; *Jitendra v. State of M.P.*, 2004 (1) Apex Criminal 501; *Ashok @ Dangra Jaiswal v. State of M.P.*, AIR 2011 SC 1335; *Sunil Hirasingh Rathod v. State of Maharashtra*, 2021 (4) RCR (Cri) 122.

On these premises, it was contended that the essential ingredients of ‘demand’ and ‘acceptance’, being *sine qua non* for conviction, Section 7, Section 13(2) read with Section 13(1) (d) of the PC Act and elements of criminal conspiracy under

Section 120-B of IPC have not been proved beyond a reasonable doubt. Therefore, the appellants are entitled to acquittal.

14. Per contra, learned Counsel appearing for the respondent–CBI supported the judgment of the trial Court and submitted the following:

14.1. It was contended that the prosecution had successfully proved the three foundational elements; demand, acceptance, and recovery, which are essential to invoke the statutory presumption under Section 20 of the PC Act. Once these facts stood established, the burden shifted to the accused to rebut the presumption by offering a credible and probable explanation, which they failed to do. Mere denial or vague defence is no rebuttal in law.

14.2. The learned Counsel for CBI submitted that the sanction accorded under Section 19 of the PC Act was valid. The Additional Chief Security Commissioner (ACSC) was the Competent Authority having administrative control over the appellants' service. The sanction order reflects application of mind, having considered all relevant materials including the complaint, FIR, transcripts, recovery memos, and the panchanama. Hence, the sanction cannot be termed mechanical.

14.3. It was argued that the testimonies of the shadow and panch witnesses were consistent, credible, and corroborated each other on all material aspects, including the demand and acceptance of the tainted currency. The pre-trap

panchanama was prepared strictly in accordance with procedure, with all mandatory steps duly followed and proved during the trial.

14.4. He submitted that the audio recordings produced by the prosecution were reliable and captured the 'demand' and 'acceptance' of illegal gratification. The recording is in harmony with the testimonies of the complainant and prosecution witnesses, and therefore reinforces the prosecution case.

14.5. It was further argued that the audio recording was preserved and produced in a manner that excludes any possibility of fabrication or manipulation. The defence has not demonstrated any plausible reason to doubt its authenticity.

14.6. It was also submitted that the prosecution had proved the offence of criminal conspiracy under Section 120-B IPC. The coordinated acts of Accused Nos. 2 and 3, before, during, and after the trap, clearly establish a meeting of minds. The conspiracy is evident from their communications, conduct, and synchronized involvement in the bribe transaction. The learned Counsel for the CBI argued that conspiracy may be inferred from circumstantial evidence and need not be proved by direct evidence.

14.7. In support of his submissions, reliance was placed on the following judgments: *K. Nachimuthu v. State*, 1994 Cri LJ 2760; *Tarsem Lal v. State of*

Haryana, 1987 Cri LJ 715; *State of U.P. v. M.K. Anthony*, AIR 1985 SC 48; *Mritunjoy Biswas v. Pranab @ Kuti Biswas*, 2013 Cri LJ 4212.

15. Before proceeding to the analytical discussion and the ultimate conclusion, a preliminary evaluation of the prosecution's evidence is warranted.

PW-1 – Sanctioning Authority

16. PW-1 Vijay Khatarkar, the then Senior Divisional Security Commissioner, RPF, Nagpur, deposed that he was competent to accord sanction for the prosecution of Accused No. 2 and that, upon receipt of certain documents from the SP, CBI, he perused the same and issued sanction on 03.12.2010 (Exh. 78). While he asserted that he had applied his mind, it was admitted in cross-examination that he had not received the CFSL report, which he himself described as “material evidence”. He further admitted that he neither called for it nor waited for it before according sanction. The testimony of PW-1 reveals that the sanction order relied upon by the prosecution was issued without consideration of all relevant materials, particularly the CFSL report relating to the electronic and voice evidence. His further admission that the sanction order was similar in language to the sanction accorded by the Chief Security Commissioner in respect of Accused No. 1, except for the name of the accused, casts a doubt regarding independent application of mind. The reference in the covering letter (Exh. 81) to a draft sanction sent by the CBI reinforces this concern.

17. Though PW-1 denied having acted mechanically or under pressure, the admitted omission of material documents and similarity of language with the earlier sanction creates an infirmity which affects the validity of sanction. The cumulative effect of PW-1's evidence indicates that the sanction for prosecution was accorded on incomplete material and without full and independent consideration, a circumstance which materially favours the accused.

PW-2 – Complainant

18. PW-2 Parwez Khan, the complainant, deposed that he was supplying food items to train passengers through five assistants and that Accused Nos. 1 and 2 were harassing them and demanding illegal gratification. His narration of events is primarily based on telephonic conversations, alleged verification, and trap proceedings organised by the CBI.

19. During cross-examination, however, several material deficiencies emerged. PW-2 admitted that he was operating his business without a valid railway licence and was unaware of procedural requirements. He acknowledged that he had maintained a personal register of dates and events, yet he neither produced it before the CBI nor the Court. More importantly, he admitted that after a lapse of four days, he could not recollect conversations verbatim unless he referred to documents, thereby indicating that his testimony is substantially memory-dependent and reconstructed rather than contemporaneous.

20. PW-2 also conceded that his written complaint (Exh. 83) was prepared only after reaching the BSNL guest house and that he could not remember the entire incident at that time. Several material conversations alleged before the Court were admittedly not included in his complaint or in his police statement. These omissions raise serious doubts regarding the reliability and completeness of the prosecution's primary version. PW-2's testimony further shows that he had no prior acquaintance or dealings with any of the accused and that several interactions took place on busy roads, near the railway station, or while on motorcycles—conditions inherently unsuitable for accurately remembering detailed conversations. His admission that he was unfamiliar with voice-recording devices, could not confirm the manner of recording or processing, and did not know whether correct procedures were followed, weakens the foundation of the prosecution's reliance on electronic evidence.

21. Significantly, PW-2 admitted that he never discussed the monetary amount directly with Accused No. 2, despite the prosecution's case being premised on a demand attributable to him. He further admitted that the directions given to Accused No. 3 to call Accused Nos. 1 and 2 were purely oral and undocumented. He also confirmed that Accused No. 3 was not coerced, thereby weakening the prosecution's claim of a controlled and corroborated trap environment. PW-2 denied suggestions of external influence or personal animosity; however, the cumulative effect of the omissions, contradictions, lack of contemporaneous record, absence of direct conversation with Accused No. 2 regarding money, and failure to recollect material

facts without written prompts renders his testimony unreliable for proving the essential ingredients of demand and acceptance beyond reasonable doubt.

22. On an overall analysis, the evidence of PW-2 suffers from material infirmities, namely: delay in complaint, absence of verbatim recollection, inconsistency between complaint, police statement and deposition, failure to document key facts, and lack of clarity regarding electronic evidence. These deficiencies materially erode the probative value of his testimony and substantially favour the accused.

Evidence of PW-3 (Shadow Witness)

23. PW-3 Ajay Wanjari, then serving as a Junior Telecom Officer with BSNL, deposed that on 15.09.2010 he was directed to report to the BSNL Inspection Quarter, where he met the CBI officials, the complainant, and another panch witness. He stated that PI Jangir informed him that the complainant had made allegations of demand of illegal gratification by Accused Nos. 1 and 2, and the complainant's written complaint (Exh. 83) was shown to him. PW-3 admitted that he had no prior knowledge of the dispute and merely signed the complaint after hearing the complainant's narration. PW-3 stated that the CBI prepared a digital voice recorder for verification and claimed that it was blank prior to recording; however, he conceded in cross-examination that no written memorandum, certification, or documentation was prepared to show that the recorder or SD card contained no pre-

existing data. No hash value or digital fingerprint of the recording device or recorded files was generated or preserved.

24. PW-3 admitted that although he was designated as the shadow witness, he did not accompany the complainant during the alleged verification conversation with Accused No. 2. He remained at a distance of 20–30 metres and therefore did not witness any part of the alleged demand. In explicit terms, PW-3 confirmed that he neither heard any conversation nor observed any conduct indicating demand of bribe by the accused. PW-3 further deposed that the recorded conversation was later played on a laptop, during which he “identified” voices. In cross-examination, however, he candidly admitted that no formal procedure of voice identification was adopted; no certification, memorandum, or contemporaneous note was made; and no direction was issued by the CBI to document such identification. He accepted that proper documentation of voice identification is necessary, yet no such procedure was followed.

25. Regarding the trap, PW-3 admitted that although the CBI manual requires the shadow witness to accompany the complainant during the actual handover, the complainant proceeded alone to meet Accused No. 3. PW-3 did not witness the alleged demand or acceptance of money. His testimony makes it clear that he did not see the complainant handing over any bribe amount to Accused No. 3, nor did he hear any conversation relating to demand or acceptance of illegal gratification. PW-3

acknowledged that the trap was conducted in a crowded public place between Platforms 1 and 2 of Wardha Railway Station, with considerable public presence, thereby making it difficult to observe events clearly. He also stated that he could not confirm the presence, identity, or activities of Accused Nos. 1 and 2 at the scene.

26. PW-3 admitted to several procedural deficiencies: no rough sketch of the scene was prepared; no detailed list of seized articles from either party was drawn; several documents referred to in the post-trap panchanama (Exh. 96) were not attached; and he signed various documents without personally verifying all the contents. He also could not confirm whether mobile phones or SIM cards of the accused were seized or checked, nor whether statements of Accused No. 3 were formally recorded.

27. With respect to the electronic evidence, PW-3 admitted that although SD cards and CDs were sealed, the panchanama did not consistently mention sealing or tamper-proofing. Section 65B certificate was also not prepared in his presence. He also acknowledged that he could not confirm whether all conversations were fully recorded or whether the devices captured complete and unaltered audio. PW-3 denied acting under pressure of the CBI, but also admitted that some items, such as a diary seized from Accused No. 3's stall, were taken by the CBI without his understanding of their relevance. He admitted that he did not personally verify all

seized articles. He also clarified that none of the accused made any written confession in his presence.

28. A cumulative reading of PW-3's testimony reveals material gaps and inconsistencies, particularly regarding the verification proceedings, the alleged demand and acceptance, and the handling of electronic evidence. PW-3 did not witness the demand or acceptance of any bribe, nor did he accompany the complainant at the crucial time. His testimony highlights significant procedural lapses, non-compliance with shadow-witness requirements, absence of proper documentation, lack of voice identification protocol, failure to maintain electronic integrity, and incomplete seizure records.

29. Consequently, the evidence of PW-3, rather than corroborating the prosecution's case, substantially weakens it, as it does not establish the essential ingredients of demand and acceptance. The omissions and irregularities brought out in cross-examination materially impair the probative value of the trap proceedings and tilt the balance of probabilities in favour of the accused.

Evidence of PW-4 – Investigating Officer H.H. Jangir :

30. PW-4 Hanuman Jangir, who was posted as Police Inspector, CBI, ACB, Nagpur, deposed that the FIR in the present case was registered by the Superintendent of Police, CBI, and that the investigation was entrusted to him. He

identified the FIR (Exh-102) and confirmed that it recorded allegations of illegal demand for a bribe by the accused. PW-4 stated that he arranged for two independent panch witnesses, Ajay Wanjari and Dilip Wakhare, to witness the lodging of the complaint and the verification of the alleged demand through telephonic conversation and subsequent trap proceedings. PW-4 further testified regarding the preparation of pre-trap and post-trap panchanamas, use of phenolphthalein tests, seizure of tainted currency, hand-wash samples, and clothing, as well as recording of telephonic conversations on a digital voice recorder (DVR) and transfer to CDs.

31. However, PW-4 candidly admitted to multiple procedural lapses and non-compliance with prescribed investigative protocols, which materially weaken the prosecution case. He admitted that no hash value of the DVR files or SD cards was generated or preserved, that SD card identification, make, and manufacturer details were not recorded, and that the DVR and CDs were not properly sealed as required. Exh-96 does not mention specimen seal impressions or sealing procedures, raising serious concerns about the integrity and authenticity of the electronic evidence. PW-4 further acknowledged that he did not prepare any site plan or sketch map of the locations visited by the complainant or the trap site, nor did he independently verify whether the complainant visited the residence of Accused No.1 or met Accused No.2 and Accused No.3 at the locations alleged. No independent witnesses were examined to confirm the complainant's movements or the events at the fruit stall. He admitted

that the complainant proceeded alone during the crucial stages of the trap, and that no panch witness accompanied him. These omissions leave the critical acts of demand and acceptance uncorroborated by any independent observer.

32. PW-4 conceded that personal searches of the complainant were conducted without preparing a list of recovered articles, that mobile phones used for alleged calls were not verified, and that Call Detail Records (CDRs) were neither procured nor examined. He further admitted that the speaker function was not on during post-trap phone calls, rendering it impossible for him or the panchas to hear the responses of the accused. These deficiencies substantially weaken the evidentiary value of the electronic and telephonic material relied upon by the prosecution. PW-4 also acknowledged that voice identification of the accused and the complainant was not documented in any formal panchnama or certification, that the DVR was never sent for forensic examination, and that no corroborative steps were taken to ensure the integrity or authenticity of the recordings. He further admitted that no explanations or statements were obtained from the accused immediately upon apprehension, contrary to the CBI Manual, depriving the prosecution of contemporaneous evidence regarding the alleged admissions.

33. Moreover, PW-4 admitted that he did not seize or examine any account books or other documents from Accused No.3's stall that could have verified financial transactions between the complainant and the stall owner. He also acknowledged that

several persons were present in the stall at the time of the alleged trap, yet no statements of such independent witnesses were recorded. These omissions leave open the possibility that the alleged “bribe” may have been a private transaction or settlement of dues, rather than an act of criminal demand and acceptance. PW-4’s testimony contains internal contradictions regarding the operation, switching off, and sealing of the DVR, further undermining the chain of custody and reliability of the recordings. His admissions regarding lack of site verification, absence of independent witnesses, failure to obtain CDRs, non-compliance with sealing and hash value procedures, and non-seizure of potentially exculpatory material collectively cast serious doubt on the veracity and probative value of the prosecution’s case.

34. On a holistic assessment, the evidence of PW-4 reflects multiple procedural deficiencies, lapses in compliance with the CBI Manual, and substantial weaknesses in the chain of custody and authenticity of the electronic recordings. The critical acts of demand and acceptance were neither witnessed by independent persons nor corroborated by reliable documentary evidence. The cumulative effect of these admissions severely undermines the credibility of the prosecution case and raises reasonable doubts regarding the guilt of the accused, thereby operating strongly in favour of the accused.

Evidence of PW-5 – Denis Mathew (RPF Sub-Inspector) Voice Identification**Witness:**

35. PW-5, Denis Mathew, who was serving as Sub-Inspector at RPF Police Station, Wardha in 2010, deposed that he was called to the CBI Office, Nagpur, on 18.11.2010 to allegedly identify the voices of Accused Nos.1 and 2. According to him, two sealed envelopes containing CDs were opened in his presence, the recordings were played, and he claimed to have identified the voices of the accused. The CDs were reportedly resealed after the hearing.

36. However, PW-5's cross-examination reveals multiple infirmities that substantially undermine the evidentiary value of his testimony:

- i) Lack of Familiarity with Voices : PW-5 admitted that he had worked with the accused for only approximately three months and had never previously heard their voices in any recorded form. This limited exposure, coupled with no prior voice samples, renders his ability to identify voices from electronic recordings highly unreliable.
- ii) Absence of Procedural Safeguards : The process of voice identification was conducted without any of the standard safeguards. No contemporaneous notes or panchnama were prepared, no portion of the conversation was reduced to writing in his presence, no signature of PW-5 was obtained on any document, and no independent witness authenticated the identification. Further, he did not verify the

seals on the envelopes or compare them with specimen seals, and no hash values were generated to preserve the integrity of the recordings.

iii) Non-Compliance with Documentation Requirements : PW-5 conceded that there was no written authorization or summons directing him to attend the CBI office, nor was his arrival time or the instructions recorded in any contemporaneous document. His statement before the CBI also omitted material facts that he testified to in Court, raising doubts regarding the reliability and veracity of his testimony.

iv) Lack of Independence : PW-5 admitted that he is under administrative control of the CBI, which, when coupled with the absence of proper procedural safeguards, raises a question about his independence as a witness and the credibility of the identification process.

37. On a holistic assessment, the evidence of PW-5 demonstrates that the purported voice identification is wholly unreliable. The absence of prior exposure to the accused's voices, the complete lack of procedural safeguards, the non-verification of seals, non-preparation of contemporaneous notes, failure to obtain signatures or independent authentication, and omissions in prior statements collectively render the voice identification inadmissible in law and of no probative value.

38. Accordingly, the testimony of PW-5 does not lend any support to the prosecution case. On the contrary, it strengthens the defence contention that the electronic voice recordings relied upon by the prosecution were not duly

authenticated, were improperly handled, and cannot be safely relied upon to establish the alleged culpability of the accused.

Evidence of PW-6 – Dilip Wakhare (BSNL Officer):

39. PW-6, Dilip Wakhare, who was serving as Junior Telecom Officer (Outdoor) in BSNL in 2010, deposed that he was directed by his superior to attend the CBI office, Nagpur, and reached there at approximately 11:15 a.m. He stated that he was present during a voice identification procedure in which PW-5, Denis Mathew, was asked to identify the voices of Accused Nos.1 and 2 from two CDs produced in sealed envelopes. PW-6 further deposed that after the procedure, the CDs were returned to the envelopes, resealed, and a panchnama (Exhibit 109) was prepared and signed by him.

40. During cross-examination, PW-6 admitted to several critical procedural lapses and omissions which substantially affect the evidentiary value of the voice identification. He candidly acknowledged that he had no personal recording of statements regarding the procedure, that he did not know whose seal was affixed on the envelopes, could not verify whether the seals matched any specimen seal, and could not confirm the date or integrity of the envelopes. No hash values were obtained for the CDs, nor was any forensic verification conducted. He further admitted that the precise words spoken by the accused, the duration of the conversations, or any transcript of the identified voices were not recorded in his

presence, and he could not recollect the contents of the panchnama at the time of deposition. PW-6 also stated that he merely observed the procedure and did not play any active role in verifying or authenticating the voice identification. He could not confirm whether he had received any official summons from the CBI office and acknowledged that he had only attended on the direction of his superior. These facts indicate that there was no independent verification or proper chain of custody maintained for the electronic evidence, and the process lacked the safeguards required for admissibility and reliability.

41. On careful consideration of the evidence of PW-6, it is apparent that the voice identification procedure was informal and non-compliant with forensic or procedural standards. The absence of hash verification, failure to document the words spoken, lack of independent authentication, and PW-6's passive role collectively render the voice identification unreliable. The testimony of PW-6 does not provide credible support to the prosecution and, in fact, underscores the deficiencies in handling electronic evidence. Consequently, these lapses weigh in favour of the accused, casting doubt on the integrity and authenticity of the recordings relied upon by the prosecution.

Evidence of PW-7 – Rajvilas Walde (Witness to Complainant Voice:

42. PW-7, Rajvilas Walde, who was serving as Junior Accountant in Mineral Exploration Corporation Ltd., Nagpur in 2010, deposed that he was called to the

CBI office, located near his office, where he observed the recording of the complainant's voice on a blank CD. He stated that a script was provided to the complainant for reading, and the recorded CD was subsequently sealed. PW-7 confirmed that he signed the panchnama (Exhibit 111) and the script (Exhibit 112) and deposed that the contents of both documents were correct. He further stated that he could identify the CD if shown to him and that the CD was opened in the presence of the learned Public Prosecutor and counsel for the accused.

43. In cross-examination, PW-7 made several admissions that substantially weaken the reliability and authenticity of the voice sample evidence. He acknowledged that the exhibit produced before the Court (Art J) was a cassette and not a CD, raising serious doubts regarding the continuity and integrity of the evidence. He admitted that he did not know on what basis the script (Exhibit 112) was prepared, had received no formal summons from the CBI, and had no written direction from his office to attend, indicating an informal and unsupervised procedure. PW-7 further stated that he could not independently confirm that the person reading the script was the complainant, Parvez Khan, thereby undermining the link between the recording and the complainant. PW-7 also admitted that his role was strictly passive; he had no control over the recording, sealing, or verification of the voice sample. No measures were taken to ensure the authenticity or integrity of the recording, such as hash verification, contemporaneous documentation, or independent verification of the complainant's identity. While PW-7 denied that his

testimony was influenced by the CBI, the admitted procedural deficiencies indicate that the voice sample evidence cannot be considered reliable.

44. On a careful appraisal of PW-7's testimony, it emerges that the complainant's voice recording is fraught with procedural irregularities and defects in the chain of custody. The substitution of the cassette for the originally recorded CD, absence of independent identification of the complainant, and informal nature of the procedure collectively compromise the authenticity and reliability of the recording. Consequently, PW-7's evidence cannot be relied upon to incriminate the accused and lends support to the defence contention that the voice sample evidence is inadmissible and procedurally flawed, thereby favoring the accused.

Evidence of PW-8 – Dr. Subrat Chaudhari (CFSL Expert):

45. PW-8, Dr. Subrat Chaudhari, Senior Scientific Officer (Grade II, Physics) at CFSL, New Delhi, deposed that the laboratory received five sealed parcels, along with a forwarding letter dated 25.11.2010, which were intact and tallied with the specimen seal impressions. The parcels, marked Ex.J, Ex.P, Ex.X, Ex.Y, and Ex.Z, contained one micro SD card with the questioned audio recordings (Ex.J) and micro audio-cassettes with specimen voice recordings of Parvez Khan, Sunil Chahande, Ravindra Bhojne, and Mohammad Salim (Ex.P, Ex.X, Ex.Y, Ex.Z). PW-8 stated that he carried out auditory and spectrographic examination of the questioned and specimen recordings and prepared a report dated 28.2.2011 (Exhibit 115),

comprising 15 pages, bearing his initials on each page. According to PW-8, the voices of Chahande, Bhojne, Salim, and Parvez Khan “tallied” with the respective questioned voices contained in Ex.J. After examination, the exhibits were sealed in separate envelopes with his wax seal, and CBI Nagpur was informed to collect them.

46. In cross-examination, PW-8 made several admissions that materially weaken the reliability and evidentiary value of the speaker identification report. PW-8 acknowledged that he had joined CFSL only in October 2010 and had limited experience, having examined only 15 cases before this matter. He admitted that his opinion in the report was “probable” and that no conclusive identification was recorded therein. Although CFSL practice may interpret “probable” as identification, this was not reflected in the report, creating ambiguity as to whether the questioned and specimen voices were in fact identical. He further acknowledged that there is a significant difference between a similar voice and the same voice, and that the report does not conclusively establish that the voices matched.

47. PW-8 also admitted that no hash values were generated for the audio files, that no duplicate CD was prepared from Ex.J, and that minor alterations to digital files could change hash values, thereby compromising the integrity and chain of custody of the electronic evidence. No independent verification of the recordings or procedural safeguards was undertaken. While PW-8 denied merely signing the report mechanically, he admitted procedural deficiencies, including the lack of forensic

checks and the limited experience of the examiner, significantly undermine the evidentiary value of the report.

48. A careful appraisal of PW-8's testimony demonstrates that the speaker identification evidence is inherently inconclusive and procedurally flawed. The opinion being only "probable," the absence of hash verification, lack of duplicate digital copies, and no independent checks raise substantial doubts about the authenticity and reliability of the evidence. The distinction between a similar and the same voice was not addressed, and the limited experience of the examiner further diminishes the weight of the expert opinion. Consequently, the voice identification report cannot be relied upon as conclusive evidence to implicate the accused, and, taken cumulatively with other evidentiary deficiencies, creates reasonable doubt, favoring the accused.

Evidence of PW-9 – Kishor Bhagat (Witness to Accused Voice) :

49. PW-9, Kishor Bhagat, deposed, through Exhibit 116, that Accused Nos. 1, 2, and 3 voluntarily consented to provide their voice specimens. A blank cassette was shown to him, tested and confirmed to be blank, and scripts were provided for reading. Side A of the cassette recorded direct voice and Side B recorded mobile phone voice. After recording, the cassettes were sealed, and PW-9 signed them as a witness. A panchanama was prepared, marked as Exhibit 117, bearing the signatures of PW-9, PI Jangir, and another panch. The scripts provided to the accused were

marked as Exhibits 118, 119, and 120 and bore the signatures of PW-9, the panch, and PI Jangir. The cassettes X, Y, and Z produced before the Court were stated to be the same as those recorded in his presence.

50. In cross-examination, PW-9 admitted several procedural deficiencies which seriously undermine the reliability of the voice specimen evidence. He was not shown identity cards of the accused, and the panchanama did not mention that the accused were introduced to him. He could not recall on which documents his signatures were obtained, and none of Exhibits 117–120 bore the signatures of Accused Nos. 1, 2, and 3. PW-9's attendance at the CBI office was routine rather than pursuant to a formal summons, and he acknowledged signing the documents at the instruction of CBI officers, without independent verification. While he accepted that the recordings occurred, there was no documentation of independent verification, and the procedure relied entirely on the direction of CBI officers. These admissions demonstrate that the attestation of the voice specimens lacked independence, procedural rigor, and verification, rendering the evidence unreliable and in favour of the accused.

Evidence of PW-10 – Krishna Kumar Singh (Investigating Officer):

51. PW-10, Krishna Kumar Singh, deposed through Exhibit 123, that he took over investigation into Crime No. 14/A/2010 on 21.09.2010 and recorded statements, collected voice samples of the complainant with oral consent in the

presence of an independent witness, and conducted voice identification of the accused in the presence of other witnesses. He sent the recordings to CFSL New Delhi for spectrographic analysis and obtained hand swabs for chemical examination. Sanctions for prosecution were obtained, and a charge-sheet was filed.

52. Cross-examination of PW-10 revealed serious procedural and evidentiary deficiencies. He did not prepare a map of the alleged spot, record statements from independent witnesses, or verify whether the complainant had prior complaints or whether the accused had authority to demand money. Consent for voice recordings was oral and undocumented. He did not obtain signatures of Denis Mathew, the complainant, or the accused on the recordings or scripts. The hash values of recordings were not verified, the seal of envelopes containing recordings was not documented, and no specimen seal was obtained prior to opening. Critical details regarding the alleged bribe, sequence of meetings, and handling of digital recordings were not corroborated by independent witnesses. The procedures outlined in the CBI Manual, including immediate narration and verification, were not followed.

53. The cross-examination of PW-10 exposes material lapses that undermine the credibility, authenticity, and reliability of the prosecution's case. The investigation relied heavily on oral statements, directions from CBI officers, and unsupervised procedures, without proper verification, documentation, or adherence to established investigative safeguards. These deficiencies, cumulatively considered with the

testimony of PW-9, indicate that the voice specimen evidence and other investigative findings cannot be safely relied upon, and, accordingly, create reasonable doubt in favour of the accused.

54. In assessing the credibility and probative value of the prosecution evidence, it is necessary to examine the depositions of each material witness and the procedural compliance achieved at various stages of the investigation, since the prosecution case rests substantially on the alleged demand and acceptance of illegal gratification supported by electronic evidence and trap proceedings. The testimony of PW-1, the Sanctioning Authority, establishes that he was statutorily competent to accord a sanction. Nonetheless, PW-1 admitted that the CFSL report was not before him when he granted the sanction (Exh. 78). Although this omission, by itself, may not be fatal to the validity of the sanction, it unmistakably demonstrates that the sanction was accorded without consideration of all relevant material evidence. The absence of such material at the stage of sanction weakens the prosecution's assertion that there was a complete and proper application of mind and, to that extent, affords support to the defence contention regarding procedural incompleteness.

55. Turning to the testimony of PW-2, the complainant, it is evident that he narrated the broad sequence of events, including the alleged demand for a bribe and the subsequent trap. However, his evidence suffers from notable deficiencies. The written complaint (Exh. 83) was not contemporaneously prepared; it was produced

with a delay and was admittedly based on memory. His recollection of the conversations was partial, and the scripts provided during verification remained unsigned and unverified. PW-2 also conceded that he had not personally handed over any money to accused No.1 and that several interactions were through an intermediary. Importantly, all meetings took place in public areas characterised by pedestrian and vehicular traffic, raising legitimate concerns about the accuracy of PW-2's recollection of crucial details. These infirmities considerably diminish the evidentiary weight of his testimony and do not inspire confidence in its use as a basis for establishing the foundational facts of demand and acceptance.

56. The deposition of PW-3, the panch witness, fares no better in terms of instilling confidence in the procedural regularity of the trap proceedings. Although PW-3 corroborated certain formalities, such as the preparation of currency notes and the general outline of trap preparations, he admitted that no written consent or appointment as a panch was issued; no detailed sketch map was prepared; voice identification procedures were neither systematically conducted nor properly recorded; and some material evidence was neither independently verified nor documented in detail. While PW-3 denied coercion, the fact remains that the absence of contemporaneous, detailed, and comprehensive documentation weakens the veracity of the trap preparations and the reliability of the panchanamas. The omissions, cumulatively, cast doubt upon the procedural sanctity expected in a corruption trap case.

57. PW-4, the Trap Laying Officer, described in detail the pre-trap verification, trap execution, and post-trap seizure. However, his cross-examination revealed grave procedural lapses that undermine the prosecution's case. PW-4 conceded that no hash values were generated for the electronic recordings; that the SD cards, DVRs, and CDs were not sealed; that no spot map was prepared; that call detail records, mobile phone verifications, and independent confirmation of the complainant's visit to the residence of accused No.1 were not obtained; and that no panch witness accompanied the complainant at the crucial stage of demand. PW-4 further admitted that the transaction was not visually witnessed by any member of the trap team due to obstructions and presence of multiple third parties, whose statements were also not recorded. No formal voice identification procedure was followed, nor was the DVR sent for forensic examination. He further admitted that explanations of the accused were not recorded at the time of apprehension, despite procedural mandates under the CBI Manual. These lapses seriously impair the integrity of the chain of evidence and create substantial uncertainty regarding the authenticity of the electronic recordings said to capture the demand.

58. PW-5, who purportedly identified the voices of accused Nos.1 and 2, admitted that he had limited familiarity with their voices, had no previous exposure to recorded versions of their speech, and had not followed any formal procedure. He did not sign any document, verify seals, or ensure authenticity of CDs. His administrative subordination to the CBI further clouds his independence. The lack of

technical safeguards or scientific procedure in voice identification renders his evidence wholly unreliable.

59. PW-6, a telecom officer, was examined to corroborate the voice identification procedure; however, he played only a passive role. He admitted that he did not verify seals, was unaware of the contents or duration of the recordings, and that no hash values were generated. The absence of any contemporaneous documentation or independent verification severely diminishes the probative value of his testimony. PW-7, who witnessed the complainant's voice sample, was similarly unable to confirm the identity of the speaker, admitted irregularities in format (cassette vs. CD), and stated that no official orders were produced for the recording process. His limited knowledge and lack of supervision render his testimony insufficient to establish authenticity of the complainant's voice sample.

60. PW-8, the CFSL expert, gave an opinion of only a "probable" voice match and conceded that he had limited experience at the time, had not performed hash verification, and had not followed all forensic safeguards. His opinion, being neither conclusive nor based on verified and sealed electronic sources, does not meet the standard of scientific certainty required for incriminating electronic evidence. PW-9, the witness to the accused's voice samples, admitted that he had not verified their identity, that the scripts and panchnamas were unsigned by the accused, and that the procedure lacked independent safeguards. His deposition adds little assurance

regarding the legitimacy of the specimen collection. PW-10, the Investigating Officer, conceded several lapses: absence of spot maps, failure to record independent witness statements, lack of verification of the accused's authority to demand money, absence of written consent for voice samples, unsigned scripts, failure to record hash values, and reliance solely on oral direction for preparation of materials. These lapses strongly undermine the credibility of the investigation.

61. In appreciating the prosecution evidence, this Court is conscious that cases under the PC Act require strict proof of the two foundational elements of the offence —‘demand’ and ‘acceptance’ of illegal gratification. The Hon’ble Supreme Court has consistently held that mere recovery of tainted money, or mere existence of electronic recordings, without reliable proof of demand, is insufficient to convict. It is therefore necessary to examine whether the prosecution's evidence inspires confidence and satisfies these legal requirements.

62. The testimony of PW-1, the Sanctioning Authority, though establishing his legal competence, discloses that the sanction order was granted without the benefit of the CFSL report, which was part of the central evidentiary corpus. The Court notes that a sanction under Section 19 of the PC Act, while not expected to be a meticulous or elaborate judgment, must nonetheless reflect application of mind to the material placed before the authority. The sanctioning authority acts as a gatekeeper to shield the public servants from fabricated cases. In circumstances like these, the competent

authority must reach to an independent decision that the said accused has prima facie committed the offence. It is not incumbent upon the authority to verify the truth of the matter. The competent authority, as it is not a court, cannot be expected to serve as an adjudicator. However, it should not have happened that the authority issued the sanction without due diligence. In the present case, PW-1 candidly admitted that significant material was absent. The omission does not vitiate the sanction, but it raises doubts about the robustness of the administrative process and, indirectly, weakens the prosecution's claim of a well-supported foundation for commencing the prosecution.

63. The evidence of the complainant, PW-2, forms the backbone of the prosecution's case. However, the Court finds several troubling inconsistencies and omissions. The written complaint was admittedly prepared after a lapse of time and relied heavily on memory rather than contemporaneous documentation. The complainant could not recall the precise conversations, the verification scripts remained unsigned, and he confirmed that the alleged monetary dealings were conducted through an intermediary. The meetings occurred in crowded environments, which, in the Court's observation, inherently reduce the reliability and accuracy of the complainant's recollection. Importantly, PW-2 admitted that he had not personally handed over any money to accused No.1. These factors cast substantial doubt on the credibility of PW-2's account. The Court notes that where the complainant's testimony is the sole basis of the prosecution's case, the law requires it

to be of sterling quality, free from suspicion and corroborated by reliable circumstances. The evidence in this case does not attain that standard.

64. PW-3, the panch witness, could not support the prosecution narrative with the level of precision and independence ordinarily expected of a panch witness in a trap case. The absence of formal appointments, sketch maps, and inventories, and unrecorded identification procedures, indicates serious procedural lapses. The Court observes that panch witnesses serve as the Court's independent eyes and ears; therefore, any deficiency in their participation or documentation undermines the reliability of the entire trap process. The deposition of PW-3 appears mechanical and vague on material particulars, failing to corroborate the complainant's assertions independently.

65. The most significant evidence relied upon by the prosecution is the testimony of PW-4, the Trap Laying Officer. However, his cross-examination reveals a wide range of procedural failures that undermine the prosecution's case. The Court notes with particular concern that the electronic recordings—purportedly capturing the demand—were not handled in accordance with statutory or forensic safeguards. Failure to generate hash values, non-sealing of DVRs and SD cards, lack of documentation of device particulars, and absence of specimen seal impressions collectively destroy the integrity of the chain of custody. In corruption cases dependent on electronic evidence, courts have repeatedly emphasised that the

prosecution must establish that the recordings are authentic, unaltered, and contemporaneous. This burden has not been discharged in the present matter.

66. Further, this Court finds that the verification process, as narrated by PW-4, was not carried out in accordance with the CBI Manual or established investigative standards. No independent verification of the complainant's visit to accused No.1's residence was made; no call detail records were collected; no attempt was made to corroborate telephonic interactions through objective records. The trap itself was executed in a manner that deprived the prosecution of reliable, independent confirmation of demand and acceptance. No panch witness accompanied the complainant at the critical moment, and the CBI team admitted that they could not visually witness the alleged transaction due to obstructions. Multiple persons occupied the place of occurrence, yet none were examined as witnesses. The Court finds that such procedural lapses raise grave doubts not only about the trap operation but also about whether any illegal transaction occurred at all.

67. PW-5, PW-6, PW-7, PW-8, and PW-9 collectively highlight defects in voice sample collection, voice identification, and forensic examination. None of these witnesses followed established procedures for ensuring the authenticity of electronic evidence. The absence of hash values, the absence of sealing, the mismatch of recording formats, the use of unsigned scripts, and the inability to verify the identity of speakers are all deeply concerning. This Court observes that modern corruption

prosecutions often rely extensively on electronic evidence; however, such evidence is admissible and reliable only when compliance with Section 65B of the Evidence Act and forensic safeguards is strictly demonstrated. In this case, the prosecution has not produced any certificate under Section 65B; none of the electronic devices were sealed; and the expert opinion itself is inconclusive, offering only a “probable” match. Despite the prosecution claiming that there were talks of demand for illegal gratification over the mobile phone of the appellant and the complainant on numerous occasions, and as has been depicted, the prosecution has not been diligent and responsible enough to have to seize the mobile phones and SIM Cards of the accused and the complainant, they have not obtained CDR, SDR and CAF of the SIM Cards to furnish the aspect that the accused and the complainant were in fact the owners and possessors of the said SIM Cards and the mobile phones. In cases such as electronic evidence, the burden of proving that the evidence is unaltered falls on the prosecution. It is incumbent to follow the Evidence Act, Rule for production, Use and the Recording of the tape-recorded evidence 1978, and Section 24 of the Criminal Manual. Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out; otherwise, it may render the said statement out of context and, therefore, inadmissible. However, in this case, the said procedure is not followed. Further they have not, produced the alleged voice files/recordings and played the same along with the tape recorder alleged to have been used in the trap proceedings before the Court and by practising due diligence, to have firstly proved that the recordings were not subjected to any tampering or fabrication and

were in absolute safe custody and again to have got the voice recorded therein identified through the complainant before the Court and also to have got the alleged transcripts verified and determined before the Court. However, the prosecution has not deliberated any attempts to do any of the above acts, nor has the prosecution furnished any certificate under Section 65B of the Indian Evidence Act in support of its transcripts, nor any reason is forthcoming for keeping the panch away, not seizing the mobile phones and SIM Cards, not producing the tape recorder and the memory cards before the Court and playing the Audio Files before the Court by getting the voices identified and by not getting the transcripts verified before the Court through the original voice recordings.

68. The prosecution has failed to comply with the mandatory procedural safeguards governing the production and admissibility of electronic evidence, particularly tape-recorded material, as prescribed under the Criminal Manual issued by the Bombay High Court 1978. Rule 24 for the production, use and recording of the tape-record evidence in Courts, of the said Manual imposes specific obligations to ensure the authenticity and integrity of electronic recordings. Under Rule 24, the prosecution must produce the original electronic medium—such as cassette tapes or digital voice recordings—duly sealed and secured to establish that the material has remained intact and free from tampering. The Rule further requires that the Court Officer should personally play and verify the recording to ensure that the audio is

clear, continuous, and untampered. These procedural safeguards are essential to preserve the evidentiary purity of electronic material.

In addition to these procedural rules, the prosecution must also satisfy the statutory requirements under Section 65B of the Indian Evidence Act, 1872. Section 65B mandates that any electronic record sought to be admitted in evidence must be accompanied by a valid 65B(4) certificate, certifying:

- (a) the manner of production of the electronic record,
- (b) the reliability of the computer or device used, and
- (c) that the contents are a true and accurate reproduction of the original electronic data.

Compliance with Section 65B is not optional; it is a condition precedent for the admissibility of any secondary electronic evidence. However, in the present case, the prosecution has not produced the original electronic evidence—the cassette tapes or the actual digital recordings. Instead, what has been placed on record is merely a transcript of the alleged conversation. A transcript, by itself, is nothing more than secondary evidence and cannot be accepted in the absence of the primary electronic medium. Moreover, even this secondary evidence is inadmissible without a valid Section 65B certificate demonstrating the authenticity and integrity of the original recording.

69. Thus, the prosecution has failed on both fronts. Non-production of the primary electronic evidence, in violation of Rule 24 of the Criminal Manual, and

Non-compliance with the mandatory requirements of Section 65B, rendering even the transcript inadmissible.

70. This dual failure strikes at the root of the prosecution's case. Without adherence to the statutory and procedural safeguards designed to prevent fabrication or manipulation, the alleged electronic evidence loses all credibility. Consequently, the transcript cannot be relied upon, and the electronic evidence must be held inadmissible. The Hon'ble Supreme Court has in the case of ***Ravinder Singh @ Kaku Versus State Of Punjab 2022 LiveLaw (SC) 461*** held that such electronic evidence cannot be relied upon in law unless compliance with section 65B of the Evidence Act. Para 21 of the said judgment is reproduced below-

“21. In light of the above, the electronic evidence produced before the High Court should have been in accordance with the statute. It should have complied with the certification requirement for it to be admissible in the court of law. As rightly stated above, Oral evidence in the place of such a certificate, as is the case in the present matter, cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law”.

71. It is well-settled that in cases of corruption of mere recovery of money cannot be the basis of conviction. In such cases, the surrounding circumstances and the testimonies of the panch witnesses play a significant role. There appears to be absolutely no reason as to why the Investigating Officer did not even attempt to send the panch witness with the complainant to verify whether the accused would, in fact, not make a demand of illegal gratification in the presence of the panch or not.

Verification of demand before a panch shadow witness inherits its own genesis and significance, and the very act of keeping the panch witness away *prima facie* demonstrates a deliberate act with a concocted notion at the hands of the prosecution. In the present factual matrix, PW2 specifically denied the presence of a panch witness, which is directly contrary to the CBI Manual. CBI officer Jangir did not even explain to the complainant or the panch witness the importance of an independent witness in corruption cases. Further, both the panch witness and PW2, the complainant, admit that some people were present at the accused's no. 3's shop; however, the prosecution has not attempted to examine such persons or determine whether they directly witnessed the transaction. In fact, the complainant said the panch witness was 15 feet away from the complainant. The complainant on page no.38, paragraph no.41 admitted that even during the alleged passing over of the bribe amount to the accused no.3, as per the version of the complainant, the panch was following him at a distance of 5-6 feet when he handed over the tainted amount to accused no.3. As such, any prudent person can analyse that the panch is bound to see the passing over of the tainted amount from the complainant to the accused no. 3. The shadow witness has nowhere spelled out that despite being at a distance of 10-15 feet, (according to complainant, 5-6 feet), the panch had not witnessed the complainant giving amount to the accused Salim. In the absence of this corroborative and incriminating piece of evidence, the very theory of acceptance of money is washed away, and no reliance can be placed on any of the versions of the prosecution.

In light of these facts, it can be said that the prosecution has failed to prove the corroboration through witness testimony.

72. In a prosecution under Section 120B IPC read with the PC Act, the prosecution must prove the existence of an agreement between two or more persons to demand or accept illegal gratification. Direct evidence is seldom available; therefore, this Court draws an inference of conspiracy from circumstantial evidence such as coordinated conduct, call records, file movement, recovery of tainted money, and the statements and acts of co-accused under Section 10 of the Evidence Act. The complainant's version, being akin to that of an accomplice, requires corroboration under Sections 114 and 133 of the Evidence Act. Demand and acceptance by one conspirator in furtherance of a standard design make all conspirators liable even if the public servant does not physically receive the bribe. The chain of circumstances must unerringly establish the meeting of minds and intentional participation of each accused. In the absence of a certificate, electronic evidence cannot be admitted. It is unclear from the evidence on record how appellants nos. 1 and 2 agreed. However, when the prosecution intended to incriminate the appellants for criminal conspiracy culpability in the said crime, it again was incumbent upon the trial to have firstly seized the mobile phones and SIM Cards of the accused and the complainant, secondly, obtained CDR, SDR and CAF of the SIM Cards to furnish the aspect that the accused and the complainant were in fact the owners and possessors of the said SIM Cards and the mobile phones and thirdly, to have produced the voice

files/recordings and played the same along with the tape recorder to have been used in the trap proceedings before the Court and by practising due diligence, to have firstly proved that the recordings were not subjected to any tampering or fabrication and were in absolute safe custody and again to have got the voice recorded therein identified through the complainant before the Court and also to have got the transcripts verified and identified before the Court. Apart from the telephonic conversation, no other evidence was brought on record to show a prior meeting of the minds. The PW 4 admitted in his deposition that he did not confiscate the notebook of appellant no.2, which shows the account of sale and that could establish the link or agreement between appellant no.1 and appellant no. 2. The testimony of the complainant and the panch witness clearly states that it was undecided to whom the complainant should pay money. If there had been a prearranged agreement between the two accused, such apparent confusion would not have occurred. According to the prosecution's account, appellant no. 2 sought a higher amount for himself; this conduct shows that there was no agreement between the appellants. It clearly shows that there was no *consensus ad idem*. The same principle has been referred by the Hon'ble Supreme Court in para 12 in the case of – ***Parveen @Sonu v State of Haryana/ Criminal Appeal No.1571 Of 2021***

"12. It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show

meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Even the alleged confessional statements of the co-accused, in absence of other acceptable corroborative evidence, is not safe to convict the accused...”

In the absence of clear and cogent evidence that proves the guilt of both accused, the prosecution has failed to establish criminal conspiracy beyond a reasonable doubt.

73. The investigative lapses admitted by PW-10 further reinforce the Court's concern that the prosecution's case was not investigated with the rigour required for offences of this nature. No spot map was prepared, no independent witnesses were examined, no verification of accused No.1's authority to demand money was undertaken, and no contemporaneous statements of the accused were recorded upon apprehension. This Court is constrained to observe that such omissions reflect a casual approach to investigation and substantially weaken the prosecution's case. The Court reiterates that procedural safeguards in trap cases are not mere technicalities; they are substantive protections aimed at preventing wrongful implication.

74. Viewed cumulatively, this Court finds that the prosecution has failed to establish the critical elements of the offence particularly demand and acceptance

through credible, reliable, and legally admissible evidence. This Court further observes that while the prosecution has attempted to build a chain of circumstances, each link in that chain is independently weakened by procedural irregularity, documentary incompleteness, or forensic insufficiency. The chain, therefore, cannot sustain a finding of guilt.

75. Upon holistic appreciation of the testimonies of all prosecution witnesses, significant and consistent deficiencies become evident. There is no credible, independent, or reliable proof of demand, an indispensable element under the PC Act. The electronic evidence, which is the backbone of the prosecution's case, is fundamentally compromised by a lack of sealing, the absence of hash values, the failure to establish a chain of custody, the lack of verification of the identity of speakers, unscientific voice identification procedures, and an inconclusive expert opinion. The trap proceedings themselves suffer from the absence of independent verification, lack of visual confirmation, failure to record crucial third-party witnesses, and failure to record contemporaneous statements of the accused. The cumulative effect of these lapses raises substantial and reasonable doubt regarding the prosecution's narrative.

76. During the course of the proceedings, the appellants' counsel have cited twenty-two cases which favour the position of the appellants; This Court finds all the relevant instances on the respective law points; however, for the sake of accuracy, this

Court would like to consider the most pertinent case laws which support the present factual matrix of the case.

The appellants have cited *CBI v. Ashok Kumar Aggarwal, (2014) 14 SCC 295*, wherein the Hon'ble Apex Court has categorically held that the sanction acts as a weapon against vexatious claims; it is a safeguard for the innocent, though not a shield for the guilty. The Hon'ble Apex Court observed with regard to the sanctioning authority that for a sanction to prosecute a public servant, the prosecution must prove that all relevant material such as the FIR, statements, recovery memos, and the draft charge-sheet was placed before the competent authority. The sanctioning authority must then personally and consciously examine the entire record, apply its independent mind, and decide whether to grant or refuse a sanction. Sanction is not a formality; it is a serious safeguard meant to protect public servants from frivolous or vexatious prosecutions while ensuring public interest. Therefore, the sanction order must clearly show that the authority considered all relevant facts and evidence. In each case, the prosecution must demonstrate that the sanctioning authority had full knowledge of the materials and genuinely applied its mind. The power to impose sanctions cannot be delegated; the statutory authority alone must make the decision. The relevant para is reproduced below-

“13. The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely

comprehensive, as all the facts and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.”

In the present factual matrix, the prosecution has failed to prove beyond a reasonable doubt that the sanctioning authority has approved a sanction based on the relevant and material evidence. Hence, the sanction given by the PW1 cannot be considered valid.

77. Thirdly, the appellant has placed reliance on the ***State of Lokayuktha Police, Davanagere vs C B Nagaraj 2025 INSC 736*** wherein the Hon'ble Apex court held that the held demand was not proven beyond a reasonable doubt. In cases under the Prevention of Corruption Act, the entire chain of demand, acceptance, and recovery must be completed to sustain a conviction. Suspicion regarding demand breaks the chain, making conviction unsustainable. Further, under Section 20, Presumption of guilt, it was held that a presumption under Section 20 cannot be applied if the factum of the demand is not proven. It was further held that the Reverse onus does

not cast an uncalled burden on the accused where the demand itself is doubtful. The Court emphasised that the law requires proof of demand, acceptance, and recovery collectively, and that mere recovery of money even if tainted cannot substitute proof of demand. Because the initial demand itself remained unproven, the legal chain required for conviction was incomplete. Consequently, the statutory presumption under Section 20 of the PC Act could not apply. The Court held that suspicion or mere recovery of money cannot replace direct or reliably inferred proof of demand “from the very mouth of the accused. The Court noted that there was no independent, coherent, or corroborated evidence showing that the accused himself made a demand for illegal gratification. Even the prosecution’s own version revealed that, at the time of the alleged payment, the relevant work had already been completed and the file forwarded making the alleged demand inherently doubtful. The relevant para are reproduced below-

“25. It is pertinent to note that till 05.02.2007, when the Respondent had conducted the physical/spot inspection, there is not even a whisper of there being any demand of bribe. Moreover, when the Complainant went back to the Respondent’s office at 5:30 PM with the money, the prosecution case itself as per the deposition of its witnesses makes it clear that the Respondent had informed the Complainant that he had already forwarded the concerned file. Thus, if the same is accepted, there was no occasion for the Complainant to go ahead with paying the amount, which he claims to be in the nature of bribe demanded by the Respondent, after the work for which the bribe was purportedly sought, had already been done. The observation of the High Court to this extent is correct that just because money changed hands, in cases like the present, it cannot be ipso

facto presumed that the same was pursuant to a demand, for the law requires that for conviction under the Act, an entire chain – beginning from demand, acceptance, and recovery has to be completed. In the case at hand, when the initial demand itself is suspicious, even if the two other components – of payment and recovery can be held to have been proved, the chain would not be complete. A penal law has to be strictly construed [Md. Rahim Ali v State of Assam, 2024 SCC OnLine SC 1695 @ Paragraph 45 and Jay Kishan v State of U.P., 2025 SCC OnLine SC 296 @ Paragraph 24]. While we will advert to the presumption under Section 20 of the Act hereinafter, there is no cavil that while a reverse onus under a specific statute can be placed on an accused, even then, there cannot be a presumption which casts an uncalled for onus on the accused...”.

In the present factual matrix, the prosecution has failed to establish the chain of events, i.e., from the demand for gratification to the recovery. It is because all the relevant evidence and witnesses that can prove the guilt of the accused have not been proved beyond a reasonable doubt. The witness has not actually seen the demand for gratification, and the audio recording produced does not comply with various procedural requirements, so it cannot be concluded that the recording is unaltered.

78. To prove that the shadow witness must watch the entire demand for gratification, failing which the conviction may be set aside, the appellants' Counsel has relied on ***K. Shanthamma vs State of Telangana 2022 SCC Online 213***. The Hon'ble Supreme Court observed that the prosecution's case suffered a major defect because the shadow witness, who was explicitly instructed to accompany complainant

into the appellant's chamber and observe the conversation did not comply with this direction. Instead, the witness waited in the corridor during the crucial moment when the alleged bribe was demanded and accepted. Both witnesses admitted this lapse, and the prosecution did not explain the witness's failure to enter the chamber. As a result, the witness was the sole witness to the alleged demand and payment. Further Complaint's own testimony contained significant contradictions and improvements, further weakening the prosecution's case. Since the independent shadow witness did not witness the transaction and there was no corroboration, the Court held that the alleged demand was not reliably proved. The relevant paragraph is reproduced below:

“14. PW 1 described how the trap was laid. In the pre-trap mediator report, it has been recorded that LW 8, Shri R. Hari Kishan, was to accompany PW 1 — complainant at the time of offering the bribe. PW 7 Shri P.V.S.S.P. Raju deposed that PW 8 Shri U.V.S. Raju, the Deputy Superintendent of Police, ACB, had instructed LW 8 to accompany PW 1 — complainant inside the chamber of the appellant. PW 8 has accepted this fact by stating in the examination-in-chief that LW 8 was asked to accompany PW 1 and observe what transpires between the appellant and PW 1. PW 8, in his evidence, accepted that only PW 1 entered the chamber of the appellant and LW 8 waited outside the chamber. Even PW 7 admitted in the cross-examination that when PW 1 entered the appellant's chamber, LW 8 remained outside in the corridor. Thus, LW 8 was supposed to be an independent witness accompanying PW 1. In breach of the directions issued to him by PW 8, he did not accompany PW 1 inside the chamber of the appellant, and he waited outside the chamber in the corridor. The prosecution offered no explanation why LW 8 did not

accompany PW 1 inside the chamber of the appellant at the time of the trap”.

79. The prosecution failed to prove why the investigating officer did not even attempt to send the panch witness with the complainant to verify whether the appellant, in fact, made the demand for illegal gratification. The said negligent act by the investigating officer is in direct contravention of the CBI manual's guidelines. Further, on the ground of relevance of the audio recording, the appellants have placed reliance on ***Rajesh Gupta vs State Through Central Bureau of Investigation 2022, SCC Online SC 1107***- wherein the Hon'ble Apex court has held that tape recording is admissible only if the voice of the speaker is identifiable, further it should be proved by the prosecution must prove that the tampering or distortion was not possible with the audio recording. The relevant para is reproduced below:

“10. As regards the alleged demand at the pre-trap stage, it is said to have been made first time on 7-3-2000 through the Chartered Accountant, namely, Mr Rajiv Jain and second time when complainant visited the office of the appellant on the same date i.e. 7-3-2000 along with her employee, Krishan Kumar. To prove the said two demands on 7-3-2000, neither Rajiv Jain, Chartered Accountant nor Krishan Kumar (employee of the complainant) have been examined in the court. It is to be observed that before the accused is called upon to explain the foundational fact of demand and acceptance, it must be proved by the prosecution by cogent evidence. The testimony of the complainant, who is an interested or partisan witness with the success of trap, must be tested in the same way as that of any other interested witness. Except the testimony of PW 3 Madhu Balal, no other material has been brought on record to prove the said

demand. Therefore, in our considered view, pre-trap demand on 7-3-2000 has not been proved by the prosecution, which is a foundational fact of the case. In our view, the finding recorded by the trial court to prove the pre-trap demand i.e. on 7-3-2000 is without any evidence on record and based on erratic evaluation, which is mechanically confirmed by the High Court”.

80. Further reliance is placed on the ***Rahil and Another vs State (Govt. of N.C.T of Delhi), 2025INC 858***- wherein the Hon'ble Supreme Court unequivocally held that the certificate under Section 65B(4) is a mandatory condition precedent for admitting computer-generated secondary evidence, and this requirement cannot be supplemented by oral evidence. Further, the Hon'ble Court held that even if the CDRs had been admitted, they only show the cell tower location to which the phone was connected, providing an approximate area rather than the exact site of the phone. The operational range of a cell tower is highly variable, depending on factors such as antenna height, signal frequency, transmitter power, and geographical obstacles. The relevant para is reproduced below:

“33. In State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 this Court held computer printouts are secondary evidence and may be admitted on production. Production of certificate under section 65-B(4) was not mandatory admission of such secondary evidence. However, in Anvar PV v. PK Basheer, (2014) 10 SCC 473 this Court took a different view and held Section 6 a special procedure for admissibility of electronic records which mandatorily requires production of certificate under 65-B(4) for admissibility of secondary evidence computer printouts. This

view was doubted in Shafhi Mohammad v. State of Himachal Pradesh, (2018) 2 SCC 801. In Sonu v. State of Haryana, (2017) 8 SCC 570, another bench of this Court, held the ratio in Anvar PV (supra) shall apply prospectively unless the defence during trial raised objection to admission of computer printouts. Finally, the issue was settled by a three-judge bench in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1, wherein the bench overruling Navjot Sandhu (supra) and Shafhi Mohd. (supra) upheld the ratio in Anvar PV (supra) and held issuance of certificate under section 65-B(4) is a condition precedent for admissibility of computer-generated secondary evidence. It cannot be supplemented through oral evidence”.

81. The Court noted that the appellants had raised objections to the admissibility of the electronic evidence during the trial. This objection put the prosecutor on notice, providing an opportunity to cure the defect by producing the required certificate, which was not done. Following this, the documents, such as CDRs and related electronic records, are inadmissible in law as uncertified secondary evidence.

82. For proving the inadmissibility of the transcript, reliance is placed on the ***Ramesh Thete v State of Madhya Pradesh Cri. Appeal No. 865 of 2007***, which this Court finds relevant in the present factual matrix. Transcripts of conversation between complainant and accused not acceptable in the absence of a tape-recorded version. The relevant para is reproduced below-

“25. As far as question of demand of bribe by the accused is concerned, again there is sole evidence of complainant (PW-3). We have already

discussed that there was no shadow witness in the case. Therefore, whether any demand was made by the accused at the time of delivery of bribe money to accused, except the evidence of complainant (PW-3), there is no other evidence. Though, according to prosecution, complainant was given a micro cassette recorder and he recorded the conversation, which took place between him and the accused, yet the said tape was not found audible. In the absence of the said tape recorded version, the transcript prepared by the investigating officer and other witnesses cannot be accepted.”

83. To prove that the appellants were wrongfully charged under the criminal conspiracy offence, the appellants Counsel has cited the case of ***State v. Uttamchand Bohra (2022) 16 SCC 663***, wherein the Hon’ble Supreme Court has clarified that criminal conspiracy requires an explicit agreement between two or more persons to commit an illegal act, or to commit a legal act by unlawful means. This agreement may be proven through direct or circumstantial evidence, but mere suspicion or unfounded inferences are not enough. Courts must examine the surrounding circumstances before and after the alleged act, and guilt can be inferred only when the circumstances allow no other reasonable explanation. The Hon’ble Apex Court also reiterated that, under the PC Act, the offence of possessing disproportionate assets primarily concerns the public servant, and that the prosecution must first establish possession of such assets. A non-public servant cannot be implicated without clear, cogent evidence of participating in a conspiracy. The relevant para is reproduced below-

“31. This Court explained the essence of conspiracy in the context of acts or omissions, and allegations relating to conspiracy along with offences under the PCA, in K. Narayana Rao [CBI v. K. Narayana Rao, (2012) 9 SCC 512 : (2012) 4 SCC (Civ) 737 : (2012) 3 SCC (Cri) 1183] , and observed that : (SCC p. 530, para 24)

“24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence.”

In the present factual matrix, there is no concrete evidence to show that the appellants were involved in the criminal conspiracy. Hence, relying on the *de jure* position on law of criminal conspiracy, this Court does not find the appellants guilty of criminal conspiracy.

84. This Court would also like to briefly discuss the cases cited by the learned Counsel for CBI and the reasons for not relying on them-

Firstly, the learned Counsel for CBI has cited the case of ***K. Nachimuthu Appellant v. State, 1994 CRI. L. J. 2760***, in which the Madras High Court has held that the mere use of a draft does not mean the sanctioning authority has not used its mind. This Court thinks that the mere use of a draft does not imply that the sanctioning authority has not used its mind. However, it is essential to note that the authority must issue sanctions after independently analysing each case and reviewing all relevant documents. In this case, PW1 has not mentioned the exact documents on which he concluded that a *prima facie* case was made against both the accused.

85. Secondly, reliance is placed on the ***Tarsem Lal Appellant v. State of Haryana, 1987 CRI. L. J. 715***. In this case, the Hon'ble Supreme Court observed that no explanation was given by the accused at the time of the search for recovery. It is a settled position of law that the mere recovery of money cannot be the basis of conviction. It should be corroborated by other evidence; similarly, the accused's conduct cannot be the sole basis of the sentence; it should be corroborated by other evidence. In the present factual matrix, the prosecution has not proved the accused's guilt beyond a reasonable doubt; hence, the conduct of the accused at the time of the pre-trap proceeding cannot be a basis of conviction.

86. Thirdly, the learned Counsel for the CBI cited decision in ***State of U.P. Appellant v. M.K. Anthony, AIR 1985 Supreme Court 48***. In this case, the Hon'ble Supreme Court held that a hyper-technical approach should not be adopted in analysing evidence. While appreciating the evidence of a witness, the question is whether, read as a whole, it has a ring of truth. Indeed, a hyper-technical approach to proof should not be adopted; however, the procedure and guidelines should not be ignored in establishing the accused's guilt. In the present factual matrix, CBI has not followed the guidelines of the CBI Manual and the Criminal Manual. It even ignored the statutory requirement of a certificate under Section 65B of the Indian Evidence Act.

87. The learned Counsel for the CBI also relied on ***Mritunjoy Biswas v. Pranab alias Kuti Biswas and another, 2013 CRI. L. J. 4212***. In this case, the Hon'ble Supreme Court held that the witness should inspire confidence in the Court. However, in the present factual matrix, PW2's testimony, the complainant in this case, is inconsistent. This Court has adopted no hyper-technical approach in interpreting the evidence. State agencies must follow the basic procedures and guidelines.

88. In light of the above discussion, it is evident that the prosecution has failed to prove, beyond reasonable doubt, the essential ingredients of the offences alleged. The inconsistencies in the complainant's version, the procedural irregularities in trap

preparations, the serious defects in handling and authentication of electronic evidence, the unreliable and unscientific voice identification, and the investigative lapses collectively destroy the credibility of the prosecution case. The evidence presented does not establish a reliable, corroborated, or legally admissible chain of proof connecting the appellants with the alleged demand or acceptance of illegal gratification. The benefit of doubt, therefore, must unquestionably go to the appellant. Accordingly, the prosecution has not discharged its burden, and the appellants are entitled to acquittal.

ORDER

- i) The Criminal Appeal No. 12/2019 and Criminal Appeal No.114/2019 are **Allowed.**
- ii) The impugned Judgment and order dated 14.12.2018 passed by the learned Session Judge, Wardha, in Special Cri. CBI ACB Case No. 7/2010 are hereby quashed and set aside.
- iii) The appellants are acquitted of all charges punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Section 120-B of the Indian Penal Code.
- iv) Their bail bonds, if any, stand cancelled, and the fine amount, if deposited, shall be refunded to them.

NIVEDITA P. MEHTA