



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPEAL NO. 376 OF 2016**

Kumar Sanjay s/o Shashi Mohan Das,  
Aged 49 years, Occupation – Public Servant,  
Office of Superintendent, Central Railway,  
Nagpur, R/o. Flat No. 102, Rajnigandha  
Apartment, 93, Ambazari Layout,  
Nagpur.

.... **APPELLANT**

**VERSUS**

Central Bureau of Investigation,  
through Superintendent of Police,  
C.B.I., A.C.B., Nagpur.

.... **RESPONDENT**

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Mr. Avinash Gupta, Senior Counsel a/b. Mr. Aakash Gupta, Counsel for the  
appellant,  
Mr. P.K. Sathianathan, Special Counsel for the respondent/CBI.

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**CORAM : NIVEDITA P. MEHTA, J.**

**DATE OF RESERVING THE JUDGMENT : 05-12-2025**

**DATE OF PRONOUNCEMENT OF THE JUDGMENT : 10-12-2025.**

**JUDGMENT :**

The appellant/accused has preferred the present appeal being aggrieved by the judgment and order dated 17.09.2016 passed by the learned Special Judge, Nagpur, in Special Case No. 12/2012, whereby the appellant was convicted for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the PC Act”) and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of

₹5,000/-, and in default of payment of fine, to suffer further Rigorous Imprisonment for three months. The appellant was 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 ₹5,000/-, and in default, to undergo further Rigorous Imprisonment for three months.

2. The prosecution case, in brief, is that :

2.1 The complainant, Shri Ritesh Surana, a railway contractor operating under the name R.S. Surana, had been awarded a work order dated 08.11.2012 by the Central Railway for supply of road metal, valued at ₹3,50,10,000/-. The appellant/accused, Shri Kumar Sanjay, was then serving as Office Superintendent (Rates Section), Central Railway, Nagpur, and was responsible for processing matters pertaining to the said work order.

On 05.12.2012, when the complainant visited the office of the accused, the accused allegedly demanded an illegal gratification of ₹1,00,000/- for ensuring smooth processing of the work order and threatened that, in the event of non-payment, delays would be caused resulting in financial loss to the complainant. The accused allegedly instructed the complainant to deliver the said amount at Maharajbag Club, Civil Lines, Nagpur, in the evening of 06.12.2012. Unwilling to accede to the demand, the complainant approached the CBI, ACB, Nagpur, on 06.12.2012 and submitted a written complaint.

2.2 Upon receipt of the complaint, PI. Lande summoned two independent panch witnesses, Shri Rajesh Ezekiel (Inspector, Customs & Central Excise) and Shri Sanjay Amin (Assistant Manager, UCO Bank). After perusing the contents of the complaint, both panch witnesses consented to participate in the proceedings. For the purpose of verification, a telephonic call was arranged from the complainant's mobile No. 9326810244 to the accused's mobile No. 9370264060. The conversation was recorded on a micro-SD card inserted in a DVR device. Upon playback of the recording, both the panch witnesses and the officer confirmed the demand of bribe and the arrangement for its acceptance as allegedly stated by the accused.

2.3 A pre-trap panchanama was prepared accordingly. Currency notes totalling ₹1,00,000/- were treated with phenolphthalein powder, and detailed instructions were issued to the complainant and the panch witnesses regarding the precautionary measures and the predetermined signal. A DVR containing a fresh SD card was placed on the person of the complainant to record the trap proceedings. At about 18:30 hours, the complainant and panch Ezekiel proceeded to Maharajbag Club, followed by the CBI team accompanied by panch Amin.

2.4 Upon arrival, the complainant and panch Ezekiel occupied a table, while the CBI team took position at some distance. Shortly thereafter, the accused arrived at the location and engaged in conversation with the complainant. During the conversation, the complainant handed over the tainted currency notes to the accused. The accused accepted the currency with his right hand, transferred it to his left hand, and kept it in the right-

hand pocket of his trousers. Upon receipt of the predetermined signal, the CBI team rushed to the spot and intercepted the accused. Panch Amin recovered the tainted notes from the right-hand pocket of the accused's trousers, and the serial numbers were found to tally with those recorded in the pre-trap panchanama. The right-hand and left-hand washes of the accused, when dipped in sodium carbonate solution, turned pink, indicating the presence of phenolphthalein. The solutions were preserved in duly sealed bottles. The DVR was recovered, and the trousers of the accused were seized after chemical testing. A post-trap panchanama was prepared along with the arrest memo and recovery memo.

2.5 On 18.12.2012, the Investigating Officer, Shri Kuhikar, conducted voice identification proceedings, during which the complainant identified his own voice, and one Shri Kishor Bhagat, a colleague of the accused, identified the voice of the accused from the recordings. The accused also provided his voice sample. All SD cards, CDs, and sealed bottles containing the hand-wash and trouser-wash solutions were forwarded to CFSL, New Delhi, for forensic examination. Relevant contractual documents were seized from the Railway office. Upon scrutiny of the entire material, the competent authority, Shri Arvind Kumar Singh, Senior Divisional Engineer, North Central Railway, Nagpur, accorded sanction for prosecution of the accused under the provisions of the PC Act.

3. During the course of the trial, the prosecution has examined seven witnesses, namely-

PW 1- Ritesh Subhash Surana -Complainant,

PW2- Rakesh Ejikal- Panch Witness,

PW3- Arvind Kumar Singh-Sanctioning Authority,

PW4-Kishore Chindhuji Bhagat, co-worker of the accused, who has identified the voice of the appellant/accused,

PW5- Pradeep s/o Ramnathji Lande – Police Inspector CBI who conducted pre and post and post trap panchnama,

PW6- Amitosh Kumar- Expert Witness from CFSL who examined the voice of the accused

PW7- Vinod Mahadeo Kuhikar- Investigating Officer

4. The prosecution, apart from the oral evidence adduced during the trial, relied upon several documentary exhibits, including the complaint and charges against the accused (Exh. 8), the verification panchnama (Exh. 17), the pre-trap panchnama (Exh. 19), the recorded telephonic conversation in Hindi (Exh. 18), the post-trap panchnama (Exh. 20), another recorded telephonic conversation in Hindi (Exh. 21), the recovery memo (Exh. 22), the panchnama relating to voice identification (Exh. 28), the office note for calling open tender (Exh. 46), verification of credentials (Exh. 49-A), acceptance letters (Exh. 51 and 52), the script for obtaining the accused's voice specimen in Hindi (Exh. 61), the expert opinion on the voice spectrographic test (Exh. 79), the forensic expert report on voice comparison (Exh. 80), the forwarding letter to the Chemical Analyser (Exh. 88), the forwarding letter to the Director, CFSL (Exh. 89), the Call Detail Records (Exh. 90), the chemical examination report (Exh. 96), and the First Information Report as well as the sanction order (available at page nos. 236

and 245 of the record).

5. Upon appreciation of both the oral and documentary evidence, the learned Special Judge concluded that the prosecution had successfully established the charges beyond reasonable doubt. The Court held that the evidence on record was credible and trustworthy and clearly demonstrated that the accused, being a public servant, had demanded and accepted illegal gratification from the complainant and had thereby committed criminal misconduct by obtaining pecuniary advantage without any lawful authority. The Court further observed that corruption in public administration requires a stringent approach and that punishment in such cases must act as a deterrent not only to the offender but also to other public servants. Considering the nature of the offence and the circumstances of the case, the learned Special Judge convicted the accused for the offence under Section 7 of the Prevention of Corruption Act, 1988, and sentenced him to suffer Rigorous Imprisonment for one year and to pay a fine of ₹5,000/-, and in default, to undergo Rigorous Imprisonment for three months. The accused was also convicted for the offence under Section 13(1)(d) read with Section 13(2) of the PC Act and was sentenced to suffer Rigorous Imprisonment for one year and to pay a fine of ₹5,000/-, and in default, to undergo Rigorous Imprisonment for three months.

6. Heard Learned Senior Counsel Mr. Avinash Gupta for the appellant and Learned Special Counsel Mr. P.K. Satyanathan for the CBI.

7. The Learned Senior Counsel appearing for the appellant, made the following submissions:

7.1. The learned trial Court has committed a grave error of law as well as fact in convicting the appellant. The impugned judgment is patently illegal, perverse, and liable to be quashed and set aside. The learned trial Court's appreciation of the evidence is completely depraved and stands in stark contradiction to the well-settled principles governing the evaluation of evidence in criminal jurisprudence. The learned trial Court failed to appreciate the evidence in its proper legal perspective, ignored material contradictions and omissions, and drew conclusions unsupported by the record. The learned trial Court overlooked vital defence evidence and failed to consider the inherent improbabilities in the prosecution's case. When the foundation of the conviction rests on such a flawed evaluation, the judgment becomes wholly unsustainable in the eyes of the law.

7.2. That the learned trial Judge completely failed to appreciate that the most vital and foundational requirement for proving the offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act is the proof of demand and acceptance of illegal gratification. It is a settled principle of law that mere recovery of tainted money or alleged possession is not sufficient to bring home the guilt of the accused unless the prosecution establishes, beyond a reasonable doubt, a specific, conscious, and voluntary demand, followed by acceptance. In the present case, neither the demand nor the acceptance has been proved by the prosecution. The learned trial Court overlooked clear admissions by the Investigating Officer, PW 7 PI Kuhikar,

which demolish the prosecution's case. In Paragraph 12 of his deposition, PW 7 categorically admitted that in the audio recording and in the written transcript prepared from the said audio, he did not find any conversation in which the accused demanded ₹1,00,000/- from the complainant. This is a crucial admission demonstrating that the alleged demand before the trap is entirely unsubstantiated. In Paragraph 17, the same witness made another unequivocal admission, further confirming that the essential ingredient of demand is wholly missing from the prosecution's evidence. Thus, even the Investigating Officer, who is the architect of the trap, was unable to support the prosecution's theory of prior demand. In the present case, when the Investigating Officer himself admits that no demand is reflected in the recorded conversation, the prosecution's case collapses at its root. No presumption under Section 20 can arise without proof of demand. The learned trial Court's failure to consider these glaring legal and factual deficiencies has resulted in a serious miscarriage of justice.

7.3. The learned trial Court has committed a fundamental error of law in relying upon the alleged recorded conversation, despite the admitted and undisputed fact that there was no compliance whatsoever with Section 65B of the Indian Evidence Act, 1872. The impugned judgment shows an apparent disregard for the mandatory statutory requirements governing the admissibility of electronic evidence. It is further argued that the voice spectrographic analysis appears to have been conducted on selectively extracted words rather than continuous natural speech, which materially affects the scientific reliability of the process.

7.4. That the alleged recorded conversation forms an electronic record within the meaning of Section 2(1)(t) of the Information Technology Act and Section 65B of the Indian Evidence Act. Once the prosecution seeks to rely upon an electronic record, whether in the form of an audio file, DVR recording, or a printed transcript, such evidence becomes admissible only upon strict and mandatory compliance with Section 65B.

7.5. The appellant's Senior Counsel further argued that it is an admitted position on record that Panch Witness No. 1 was not accompanying the complainant at the time of the alleged trap. Therefore, the prosecution's case hinges entirely on the complainant's sole, uncorroborated version. The complainant, as well as Panch No. 1, claimed that the tainted amount was handed over to him near the Maharajbagh Club, where the trap was set. The trap-laying officer, however, claims that the amount was kept in the complainant's pocket at the C.B.I. Office itself before leaving for the trap, and even before the preparation of the pre-trap Panchanama. One fails to see how these versions can be reconciled.

7.6. Although it is claimed that the amount was kept by the accused in the right side pocket of the pants of the accused, the post-trap panchanama provides that the amount was recovered from the left side pocket of the pants of the accused. It is the further case of the prosecution that the pocket from which the amount was recovered is also encircled with the pen. It is submitted that if the pant Article is seen, no encircled mark can be seen on either of the side pockets, but such a mark is seen on the back pocket of the said pant. This only lends support to the accused's version that he has neither

demanded nor accepted any bribe from the complainant, and that the entire case is fabricated.

7.7. That the complainant has admittedly registered three different complaints in three different police stations against different persons. This pattern of repeated complaints, initiated in separate jurisdictions against unrelated individuals, clearly reflects a *mala fide* intention and raises serious doubts about the complainant's credibility, *bona fides*, and true motives in the present case. Such conduct is not consistent with that of a genuine victim but is indicative of a person who habitually initiates criminal complaints to settle personal scores or to exert pressure. The learned trial Judge failed to consider that when the complainant's past conduct shows a propensity to lodge multiple complaints, his testimony cannot be accepted without independent corroboration, especially in a case under the PC Act where the standard of proof is stringent.

7.8. The complainant's testimony is riddled with material inconsistencies, contradictions, and omissions, which severely dent its credibility and reliability. His version of events has not remained consistent at any stage, whether in the FIR, his pre-trial statements, the alleged recorded conversation, or his deposition before the Court. These inconsistencies are not minor or peripheral; they strike at the very root of the prosecution's case and render his testimony wholly unsafe to rely upon. Further, the complainant has been effectively discredited in cross-examination, where he admitted facts that contradict the prosecution's theory and exposed several improbabilities in his own version. His statements regarding the alleged

demand, the sequence of events, and the accused's role fluctuate significantly, suggesting a lack of truthfulness and raising doubts about his motives.

7.9. Lastly, it is an admitted position on record that the Letter of Acceptance (LOA) had already been issued to the complainant in respect of the tendered work. Even according to the complainant, the LOA itself operates as a work order, enabling commencement of work without further approval. Thus, the very foundation for the alleged demand collapses, because the accused had no pending official act to perform in favour of the complainant.

7.10. In essence, the appellant's Senior Counsel has argued that the conviction is illegal and perverse as the prosecution failed to prove the essential ingredients of demand and acceptance, and even the IO admitted no demand is reflected in the recordings or transcript. The learned trial Court wrongly relied on inadmissible electronic evidence without a mandatory Section 65B certificate, rendering the entire reliance unlawful. The complainant's testimony is uncorroborated; the panch witness was absent during the trap; and the complainant has filed multiple complaints, showing *mala fides*.

7.11. During the course of the proceedings, the appellant's Senior Counsel has cited the following judgments-

- (i) *Rakesh Kapoor -Vs- State Of Himachal Pradesh, (2012) 13 SCC 552;*
- (ii) *Chandrasen Kisanrao Chauhan -Vs- State Of Maharashtra, Criminal Appeal No. 104/1999;*
- (iii) *Lalita v. Vishwanath, 2025 SCC OnLine SC 370,*

- (iv) *Murli And Another -Vs- State Of Rajasthan, (2009) 9 SCC 417;*
- (v) *Ramrao Satyanarayan Ramod -Vs- The State Of Maharashtra, Criminal Appeal No. 544/2004;*
- (vi) *Shri Mohamud Shadab -Vs- State, 2012 All Mr (Cri) 2255;*
- (vii) *Ramesh Chandra Agrawal -Vs- Regency Hospital Ltd, Civil Appeal No. 5991/2002;*
- (viii) *Jagan Prabhakar Gawai -VS State of Maharashtra, Criminal Appeal No.187/2012,*
- (ix) *N. Vijay Kumar -Vs- State of Tamil Nadu, (2021) 3 SCC 687;*
- (x) *P. Satyanarayana Murthy -Vs.- The Inspector of Police & Anr., 2015 ALL SCR 3171,and*
- (xi) *Shri Mohamud Shadab -Vs- State, 2012 ALL MR (Cri) 2255.*

8. Per Contra, the Learned Counsel appearing on behalf of CBI has made the following submissions;

8.1. The learned trial Court has, in fact, appreciated all the relevant evidence and has examined all the material witnesses. The witnesses' testimony was found to be consistent and cogent throughout the trial.

8.2. In the present factual matrix, the prosecution has successfully established the entire statutory chain that attracts the presumption under Section 20 of the PC Act. The evidence on record clearly demonstrates the three indispensable components, demand, acceptance, and recovery, each of which has been consistently upheld by the Hon'ble Supreme Court as the foundational elements to invoke the statutory presumption of guilt against a public servant. When demand, acceptance, and recovery are all established beyond a reasonable doubt, the statutory presumption under Section 20 squarely applies. Once such foundational facts are proved, the burden shifts

to the accused to offer a credible, probable, and acceptable explanation for receiving the money. In the present case, the accused has failed to discharge this burden. Mere bald denial or offering a vague defence is insufficient to rebut the presumption.

8.3 PW3-Arvind Kumar Singh, the sanctioning authority, was the competent authority empowered to accord sanction under Section 19 of the PC Act. The appellant possessed complete administrative control over the appellant's cadre and service conditions, and therefore, the sanction accorded by him is legally valid and within jurisdiction. PW3 had applied his independent mind to the materials placed before him, including the complaint, FIR, conversation transcripts, recovery memos, and the panchnama. The order reflects due consideration of all relevant documents, thereby demonstrating that the sanctioning authority arrived at an informed, conscious, and deliberate decision. Accordingly, the sanction cannot be termed mechanical or invalid at the appellate stage, and the prosecution's case suffers from no infirmity on this ground.

8.4 The testimonies of the shadow witness and the panch witness remained consistent and credible throughout the trial. Their depositions corroborate each other on all material particulars, including the initial demand, the acceptance of tainted currency, and the events immediately preceding and following the trap. It was argued that the pre-trap panchnama was conducted strictly in accordance with due procedure, with all mandatory safeguards being observed. The demonstration of phenolphthalein powder, briefing of witnesses, preparation of currency notes, and instructions to the

shadow witness were meticulously recorded and duly proved during the trial. In view of this consistent and unimpeached evidence, the prosecution's case stands fortified and no ground exists to discredit the trap proceedings or the role of the shadow and panch witnesses.

8.5 The audio recording produced by the prosecution constitutes conclusive evidence against the appellant, as it clearly captures the demand and acceptance of illegal gratification. The contents of the recording align with the testimonies of the complainant, shadow witness, and the trap team, thereby reinforcing the prosecution's case beyond any reasonable doubt.

8.6 It was additionally argued that the audio recording is authentic and free from fabrication or manipulation. The learned counsel emphasised that the circumstances under which the recording was made, secured, and produced in court make it impossible for the defence to suggest any alteration plausibly.

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

10. PW-1 Shri Ritesh Surana, the complainant, entered the witness box and narrated the events surrounding the alleged demand and acceptance of illegal gratification by the accused. During his cross-examination, however, several material aspects emerged that cast substantial doubt on the credibility of his version and the prosecution's case.

11. At the outset, PW-1 admitted that after the issuance of the acceptance letter, the work of execution of the agreement lies with the Divisional Engineer and that, after execution of the contract, “nothing remains to be done by the Rates Section where the accused was working.” He further conceded that the accused had no role in handing over the site or preparing the bills. These admissions directly undermine the prosecution’s foundational assertion that the accused was in a position to exert influence over the complainant’s contractual work. Significant inconsistencies also appear regarding the execution of the bank guarantee and agreement. The witness was unable to specify the date of execution of the agreement and contradicted himself on whether the bank guarantee was submitted on 3.12.2012 or 4.12.2012. He also admitted that the bank guarantee was submitted at Hinganghat, rather than at Nagpur, where the accused was posted. Such contradictions weaken the prosecution’s allegation that any official work in relation to the complainant was pending before the accused. The complainant’s testimony concerning the mobile number allegedly used by the accused is equally uncertain. PW-1 categorically stated that he does not recall whether the mobile number to which he allegedly made the verification call belonged to the accused and admitted that he did not know whether the accused owned or possessed that number at the relevant time. This uncertainty directly affects the reliability of the alleged recorded conversation said to contain the demand.

12. The evidence relating to the verification panchanama also suffers from serious inconsistencies. PW-1 stated that on the date in question he had lodged three complaints against three different railway officers and that the verification process pertained to all of them collectively. He further deposed that the so-called “chamber” was actually a single large hall containing four to five tables of different police inspectors, making it unclear which officer’s chamber the verification process took place in. These statements materially dilute the prosecution’s version of an exclusive and distinct verification process relating specifically to the accused.

13. Contradictions also arise in the pre-trap proceedings. The witness admitted that between 3.30 p.m. and 6.30 p.m. he was merely sitting in the CBI office and “was nowhere involved in that process,” contrary to the prosecution’s assertion of detailed pre-trap preparations involving demonstration of phenolphthalein, recording of currency numbers, and instructions. He further denied any knowledge of whether powdered notes were placed in a laptop bag, a fact specifically relied upon in the prosecution narrative.

14. The handling of electronic evidence also raises substantial doubt. PW-1 admitted that the details of his Samsung handset were not recorded, that no SD card was inserted into his mobile in his presence, that no CD was prepared from the SD card in his presence, and that his signature was not obtained on the sealing of the SD card. These omissions materially affect the

chain of custody and authenticity of the alleged voice recordings produced by the prosecution. The complainant also failed to provide clarity regarding the actual trap. He admitted that he was unable to state the precise location of the trap party, did not recollect whether any map of the sitting arrangement was prepared, and stated that the trap party “came together,” contrary to the prosecution’s assertion of a staged and systematic entry. He further conceded that he cannot identify whether the raiding party members were already inside the premises at the time of the alleged handing over of money.

15. The witness’s earlier statement to the CBI also contains material omissions and contradictions. PW-1 admitted that an important portion of his present deposition namely that, prior to entering the bar, the accused called and said he would arrive in five minutes is not mentioned in his original statement, and he is unable to explain this omission. He further denied a specific inculpatory portion of his statement (marked ‘A’) that he had demanded 1% of tender value from another railway officer, raising doubt about the voluntariness and accuracy of statements attributed to him.

16. The call detail records relied upon by the prosecution also find no corroboration from PW-1, who denied making various calls from several locations as suggested in cross-examination. His denial of multiple calls showing his movements across different parts of the city further casts doubt on the prosecution’s reconstruction of events on the day of verification and trap. Another notable aspect is the witness’s admission that although he remained in the CBI office until about 12.00–12.30 a.m. after the trap, he did

not sign a single document pertaining to the present case on that night. This is inconsistent with the usual mandatory requirement that the complainant signs the post-trap documentation, thereby raising concerns about the manner and timing of preparation of those documents. Throughout his cross-examination, the witness frequently stated that he does not remember or cannot say regarding crucial aspects, including the time of the meeting on 4<sup>th</sup> December, the exact location of the raiding party, whether the chamber was locked, details of the club layout, the preparation of any site map, and ownership of the phone number. These repeated lapses of memory and inability to corroborate material facts weaken the reliability of his testimony.

17. Taken cumulatively, the admissions, inconsistencies, omissions, and contradictions in the testimony of PW-1 create material doubt regarding the prosecution's case. The uncertainties relating to the alleged mobile conversation, the disputed verification process, the doubtful handling of electronic evidence, and the unclear depiction of the trap proceedings materially affect the credibility of the complainant and significantly benefit the accused.

18. Testimony of PW-2, Rajesh Ejikal, reveals several inconsistencies, omissions, and admissions that materially weaken the prosecution's case and substantially support the defence. Although PW-2 supported the prosecution during examination-in-chief, his cross-examination brought forth multiple contradictions between his oral testimony, the recorded statements, and the

procedure allegedly followed by the CBI. PW-2 admitted that he did not recollect whether the complainant was instructed to remain confined to the chamber of the Investigating Officer during the verification proceedings, thereby diluting the prosecution's claim of strict secrecy. He stated that the complainant's mobile phone remained with him throughout and further conceded that the complainant was moving between the cabins of two different officers for considerable periods.

19. PW-2 continuously observed the complainant and that the verification call was made in strict, controlled conditions. PW-2 candidly stated that he did not independently know the accused's mobile number and only stated the number as it was told to him by the complainant, thereby diminishing the reliability of the verification call, which is the foundational step of the prosecution's case. He further admitted that several crucial aspects, such as the placement of smeared currency notes in a laptop bag and the insertion of the voice recorder into the complainant's pocket outside the club, were never mentioned in his statement recorded by the CBI. He could not provide any explanation for these omissions, thereby creating doubt about the accuracy of the recorded statements as well as the prosecution's procedural narrative.

20. The witness acknowledged that although he claimed to have been present throughout, the complainant's personal search was not conducted before handing over the tainted money near Maharajbagh, leaving open the possibility of prior possession, substitution, or manipulation. He also admitted that after the tainted currency was given to the complainant outside

the club, no search was conducted before he entered the premises, which compromises the integrity of the trap. PW-2 further stated that he did not know whether the accused's mobile phone or SIM card was seized at any stage, an omission which strikes at the root of the prosecution's reliance on recorded conversations as authentic and unmanipulated. Significantly, PW-2 disowned important portions of his own recorded statement, including the portions marked "A" and "B", admitting that they were incorrect and that he could not assign any reason why they appeared in the official record. This admission directly affects the reliability of the statement and suggests the possibility of inaccuracies or embellishments by the investigating agency. He also denied that certain conversations allegedly forming part of the recording such as discussions relating to liquor orders or the complainant's interaction with a person named Dharma ever occurred, thereby raising serious doubts about the authenticity of the alleged audio material.

21. The witness further denied the prosecution's version that testing of the accused's fingers, the collection of solutions, and sealing of bottles all occurred within the club premises, thus contradicting the prosecution in material particulars regarding the manner in which the trap was executed. His categorical denial of several procedural steps, coupled with his failure to recall critical aspects of the trap, significantly undermines the prosecution's claim of strict adherence to procedural safeguards. The witness also admitted that he had wrongly stated earlier that it was P.I. K.K. Singh who first questioned the complainant regarding payment, later correcting himself to say that the inquiry was actually made by P.I. Lande, further revealing

confusion and inconsistency in recalling material events.

22. Overall, the deposition of PW-2, when read as a whole, reveals substantial contradictions between his in-Court testimony, his earlier recorded statements, and the prosecution's narrative. His inability to recall important steps, the unexplained omissions in his recorded statement, the disowning of material portions of that statement, the failure to conduct proper personal search of the complainant, his admission of movement of the complainant during crucial periods, the lack of seizure of the accused's phone, and the doubts raised regarding the genuineness of the recorded conversations collectively dilute the credibility of the trap and verification proceedings. These contradictions and procedural deficiencies create a serious doubt about the prosecution's version and materially support the defence contention that the trap proceedings were not carried out in the manner alleged and that the possibility of manipulation cannot be ruled out.

23. The testimony of PW-3 Arvind Kumar Singh, Senior Divisional Engineer, materially supports the defence by clarifying the limited and non-decisional role of the accused, Kumar Sanjay, in relation to the work of the complainant, Ritesh Surana. PW-3 unequivocally admitted that the accused was not empowered to pass any work order, nor was he responsible for issuing the letter of acceptance, which was required to be issued only by the Senior Divisional Engineer (South). He further confirmed that the complainant had already been allotted the site and had commenced work even prior to the alleged incident, thereby eliminating any dependency upon

the accused for initiation of the work. PW-3 further stated that the only function discharged by the accused was the preparation of the agreement, which had already been completed and forwarded to the legal department before the date of the alleged demand or acceptance of a bribe. He expressly admitted that no other official work relating to the complainant remained pending with the accused, and that even the preparation of bills of the complainant's work did not fall within the accused's duties or authority. These admissions significantly undermine the prosecution's allegation that the accused demanded money for passing bills or facilitating work, as no such power was vested in him.

24. During cross-examination, PW-3 also confirmed that the accused's appointing authority was the Chief Personnel Officer, though he denied the suggestion that he himself lacked the competence to remove the accused from service or that he had signed a draft sanction without applying his mind. Nevertheless, his categorical admissions regarding the absence of any authority, control, or functional relevance of the accused over the complainant's contractual work strike at the foundational premise of motive and opportunity for bribery. The evidence of PW-3 therefore supports the defence contention that the accused had no official capacity to cause either favour or disfavour to the complainant, thereby creating a substantial doubt regarding the prosecution's allegation of illegal demand or acceptance of gratification.

25. The witness has categorically admitted that the accused had no role whatsoever in issuing the work order or in preparing or processing the contractor's bills. In such circumstances, it is wholly unclear how the sanctioning authority could have applied its mind to grant a sanction for prosecution. Sanction must be preceded by a real and meaningful consideration of the accused's duties and actual involvement in the alleged transaction. When the record itself shows that the accused was not responsible for bill issuance or processing, the very basis for attributing a motive or opportunity to demand illegal gratification becomes untenable. The sanctioning authority, therefore, appears to have granted sanction in a mechanical and uninformed manner, without verifying whether the accused had any connection with the work in question. Such a sanction, granted without proper application of mind, is legally invalid and vitiates the entire prosecution.

26. The testimony of PW-4 Kishor Bhagat, who worked as a Clerk in the Engineering Branch of the Divisional Railway Manager's Office, Nagpur, contains several material admissions that support the defence and weaken the prosecution's case. Although PW-4 stated in examination-in-chief that he could identify the voice of the accused owing to their long professional association, his testimony in Court significantly diluted this assertion. PW-4 expressly stated that although he had earlier identified the accused's voice in the CBI office, he was not sure of identifying the voice of the accused from

the recorded conversation when the CD was played in Court. This equivocation creates a serious doubt regarding the reliability of the prosecution's voice identification evidence, which is central to the allegation of demand.

27. PW-4 further admitted that the accused had no independent authority in the processing of the tender and that he was required only to follow the instructions of his superiors. In cross-examination, he clarified that it was merely the general duty of the accused to prepare a draft acceptance letter and place it before the superior, and that even in the absence of the accused, the Senior Section Officer (SSO) routinely prepared such drafts. He also confirmed that certain tender-related letters, including the one exhibited before him (Exh. 52), did not bear the signature of the accused, thereby reinforcing that the accused did not exercise final authority or discretion over the acceptance process. Crucially, PW-4 admitted that after the acceptance of the tender and allotment of the work, their department had no nexus with the execution of the work, and that in such cases, no work order is issued. This admission significantly undermines the prosecution's theory that the accused could influence or obstruct the complainant's work or bills, thereby negating any motive or opportunity for illegal gratification. The witness's evidence confirms that the work of the complainant had already been allotted upon acceptance of the tender and that the accused had no further role in the matter thereafter. In totality, the admissions of PW-4 regarding the limited ministerial role of the accused, the absence of any discretionary power, the

lack of any departmental nexus after acceptance of tender, the absence of the accused's signature on key documents, and his inability to reliably identify the accused's voice in Court, collectively support the defence case. These factors materially weaken the prosecution's allegations of demand and acceptance and raise significant doubt regarding the involvement of the accused in any corrupt act.

28. The testimony of PW-5, P.I. Pradeep Lande: During cross-examination, PW-5 admitted that he did not verify whether the accused had any authority in his official capacity to interfere with or stop the work of the complainant, thereby striking at the root of the prosecution's theory of motive or capacity for illegal gratification. He further stated that he does not recollect whether the complainant had already received the work order, allotment of site, and had furnished the bank guarantee before filing the report, facts which, if true, negate any official leverage with the accused.

29. PW-5 admitted that although the verification call was allegedly made at 2:20 p.m., he did not verify to whom the mobile number used for the call was allotted, and also denied the defence suggestion that the digital file properties indicated that the call occurred at 12:02 p.m. These inconsistencies raise serious doubt about the genuineness, timing, and reliability of the alleged verification conversation. Importantly, PW-5 conceded that during verification the accused had not, on his own, demanded ₹1,00,000/- from the complainant, and that the accused merely asked the

complainant to come to Maharajbagh, which substantially dilutes the prosecution's assertion of an express demand during verification. PW-5 further stated that the complainant produced the alleged bribe amount only at 3:00–3:30 p.m., and denied the suggestion that the complainant was not present in the CBI office thereafter, though he also admitted that he did not make seal impressions in the pre-trap or post-trap panchanamas. His statement that the tainted notes were not handed over to the complainant at the club gate contradicts the version of PW-2, thereby casting doubt on the integrity and consistency of the trap preparation process.

30. The witness also gave conflicting statements regarding the seating arrangements inside the club. At first, he stated that he, the panch, and other officials sat on the same table, but later corrected himself, admitting that he was actually seated in an adjoining room separated by a transparent glass door, thereby undermining his ability to directly observe the alleged demand or acceptance. He was unable to identify the person sitting with the complainant and did not remember the name of the club member who facilitated their entry, indicating lapses in recollection at crucial points. PW-5 also admitted that he had not prepared the sketch of the spot, despite the trap taking place in a multi-room facility with separate entrances, making independent verification of the officers' positions impossible.

31. Though he denied the defence suggestions of manipulation or fabrication, PW-5 was confronted with multiple procedural deficiencies; he

did not verify the ownership of the phone number used for verification, and he had no knowledge of whether the complainant consumed liquor inside the lounge. He confirmed that the complainant retained both his mobile phone and the alleged tainted amount inside the club, and he admitted that some staff travelled separately on motorcycles, raising concerns about coordinated control of the trap team.

32. The contradictions within his own testimony, particularly regarding his presence and line of sight during the alleged acceptance, the non-verification of crucial details such as phone ownership, the absence of seal impressions on panchanamas, and the admission that no independent demand was made by the accused during verification, cumulatively impair the credibility of the trap proceedings. These deficiencies materially benefit the defence by creating doubt about the fairness, reliability, and integrity of the investigation.

33. The testimony of PW-6, Senior Scientific Officer Amitosh Kumar of CFSL, New Delhi, reveals several material aspects that weaken the prosecution's reliance on the alleged voice recordings and substantially support the defence. Though PW-6 opined that the questioned voice samples marked "C" and "K" matched the specimen voice marked "X", his cross-examination brings out significant omissions and methodological limitations that diminish the evidentiary value of his report.

34. PW-6 admitted that although the micro SD cards contained metadata

capable of showing the date and time of creation of the recordings, he did not record or mention the creation date or the end-time of any file in his report (Exh. 80). This omission is critical because the authenticity, originality, and integrity of the recordings, especially in a trap case, depend heavily upon the ability to trace the chronological creation of digital files. His admission that virus-infected cards may delay or prevent files from opening further underscores potential uncertainties regarding the functional integrity of the electronic media received.

35. He further conceded that he examined the recordings not on the basis of the full sentences, but only by selecting common words, and compared these limited words with scripted specimen sentences read by the accused. He also admitted that the written script of both the questioned conversation and the specimen voice was provided to him by the CBI, and he relied upon that script for analysis. This dependence on externally supplied scripts, rather than independent linguistic extraction from the recordings, raises concerns about the possibility of transcription inaccuracies or influence, especially since no independent transcription was prepared by the expert himself.

36. PW-6 also confirmed that he did not send his specimen seal impression along with the report and returned material, which is a procedural safeguard normally used to verify that the returned exhibits were indeed sealed by the expert after examination. He did not enclose any covering letter as part of his communication to CBI, and his report also does not reflect essential technical

details such as file-properties, duration parameters, or timestamps. These omissions, taken cumulatively, materially reduce the reliability of the expert opinion.

37. His cross-examination also shows that the specimen voice in parcel “X” consisted of scripted sentences, whereas the questioned recordings included conversation, meaning the samples compared were not identical in structure or natural speech flow, thereby affecting the robustness of spectrographic and phonetic comparison. Moreover, he reiterated that he used only selected common words, further narrowing the analytical basis of the comparison.

38. While PW-6 denied the suggestion that the CBI provided written scripts to obtain a favourable report, the absence of contemporaneous metadata analysis, failure to record timestamps, reliance on selective lexical comparison, and non-submission of specimen seals together create substantial doubt about the scientific completeness and procedural regularity of the voice examination. These deficiencies, on the face of the record, significantly dilute the evidentiary value of the expert opinion and strengthen the defence contention that the alleged recordings cannot be treated as reliable or conclusive proof linking the accused to the alleged conversation.

39. Having meticulously examined the depositions of PW-1 to PW-6, the cross-examinations conducted, the procedural documents placed on record, and the legal requirements governing offences under the PC Act, this Court proceeds to record its findings.

40. From the complainant's testimony, it emerges that his testimony suffers from material contradictions. His categorical admissions that the accused had no authority over the complainant's work after issuance of the acceptance letter, coupled with his uncertainty about the mobile number allegedly belonging to the accused, severely erode the credibility of the prosecution's case. His inability to confirm the details of the trap or the chain of custody of the digital evidence renders his testimony unsafe to rely upon. This Court has carefully examined PW-1's testimony. It is observed that his evidence is marred by multiple material contradictions and omissions. PW-1 admitted that after issuance of the acceptance letter, the accused had no role in the execution of the agreement, the preparation of bills, or the handing over of the site. These admissions directly negate the prosecution's case that the accused had the ability to influence or obstruct the complainant's contractual work.

41. Further, PW-1's inability to recall the mobile number allegedly used by the accused, discrepancies regarding the date of submission of the bank guarantee, and uncertainty regarding the location of submission (Hinganghat vs. Nagpur) seriously undermine the reliability of the alleged verification call. His testimony concerning the trap is also inconsistent: he could not recollect the positions of officers, the layout of the club, or the preparation of a site map. This Court notes that such lapses weaken the foundational credibility of the prosecution's narrative. Additionally, PW-1's prior statement to the CBI

omitted several material aspects that he later deposed to in Court, raising serious doubts about the voluntariness and accuracy of the statements relied upon by the prosecution.

42. Similarly, PW-2, the panch witness to both verification and trap, admitted to several procedural deficiencies, including the complainant's unrestricted movement during verification, absence of personal search at pivotal moments, non-disclosure of material facts in his recorded statement, and disowning of significant inculpatory portions attributed to him. These deficiencies strike at the root of the prosecution's attempt to prove a reliable and legally sustainable trap. PW-2 admitted to substantial procedural deficiencies. The Court observes that the complainant was not confined, moved freely between different officers' cabins, and retained the alleged tainted currency and his mobile phone during crucial periods. PW-2 also disowned portions of his prior recorded statement and could not explain the discrepancies. This Court finds that these admissions cast serious doubt on the integrity of both the verification and trap proceedings. The absence of personal search, coupled with a lack of independent verification, raises a reasonable possibility of manipulation, substitution, or prior possession of currency, thereby undermining the prosecution's claim.

43. The testimony of PW-3 and PW-4, both departmental witnesses, clearly establishes that the accused wielded no authority or decisional power concerning the complainant's contract. Their evidence confirms that all significant processes, including acceptance of tender, execution of agreement,

allotment of site, and commencement of work, had already been completed and did not lie within the domain of the accused. This completely negates the prosecution's premise that the accused was in a position to extend any favour or disfavour to the complainant. This Court observes that both PW-3 (Senior Divisional Engineer) and PW-4 (Clerk) unequivocally established that the accused had no authority to issue work orders, pass bills, or allot sites. PW-3 confirmed that all critical processes, including tender acceptance, site allotment, and execution of the agreement, had been completed prior to the alleged incident. PW-4 corroborated that preparation of acceptance letters was routine, and discretionary authority rested with superior officers. The evidence clearly negates both motive and opportunity for the accused to demand or accept illegal gratification. It also undermines the prosecution's claim that the accused could influence the complainant's contractual work.

44. The Investigating Officer, admitted to serious investigative lapses, including non-verification of whether any official work of the complainant was pending with the accused, failure to confirm ownership of the mobile number used for verification, discrepancies in the timing of the verification call, absence of seal impressions on crucial documents, and contradictions regarding his vantage point during the alleged acceptance inside the club. These deficiencies materially affect the credibility of the entire trap. PW-5 admitted to multiple lapses in investigation. Ownership of the mobile number used for verification was not independently verified, the exact timing of the verification call remains inconsistent, and no personal search of the

complainant was conducted before or after handing over the tainted currency. PW-5's account of the seating arrangements during the alleged trap was inconsistent, and no sketch of the premises was prepared. These procedural deficiencies materially weaken the credibility and reliability of the trap and verification process. The Court finds that the absence of standard safeguards raises reasonable doubt regarding the accuracy and fairness of the proceedings.

45. PW-6, the expert witness from CFSL, conceded that he did not record creation timestamps of the audio files, relied on written scripts supplied by the CBI, examined only selective common words instead of complete conversations, and did not include his specimen seal impression in his report. These omissions weaken the evidentiary value of the voice comparison and materially dilute the prosecution's reliance on electronic evidence. The Court observes that the voice analysis report lacks procedural and methodological rigour. PW-6 admitted that the recordings were examined based on selective words, relied on scripts provided by the CBI, did not note creation dates or timestamps, and did not enclose a specimen seal. These deficiencies materially reduce the evidentiary value of the recordings. The analysis was not conducted independently and fails to establish the authenticity or integrity of the alleged voice conversation.

46. Another critical aspect affecting the sustainability of the prosecution case pertains to the sanction for prosecution. The evidence on record,

particularly the testimony of PW-3, reveals that the sanctioning authority was not the appointing authority of the accused. PW-3 unequivocally admitted that the appointing authority of the accused was the Chief Personnel Officer, while the sanction had been granted by a junior authority lacking competence under service rules.

47. It is well-settled that a sanction under Section 19 of the PC Act must be accorded by the authority competent to remove the delinquent public servant from service. Sanction granted by an authority lacking such competence is *non est* in the eyes of the law and vitiates the very institution of prosecution. Judicial precedents reaffirm that such a defect goes to the root of the matter, depriving the Court of jurisdiction to take cognisance. The present case suffers from this very infirmity, rendering the prosecution unsustainable on this legal ground alone. The Court further observes that the sanction under Section 19 of the PC Act was granted by a junior authority that was not the appointing authority of the accused. Judicial precedents clearly establish that only the competent authority capable of removing the public servant from service can grant a valid sanction. This defect is fundamental and fatal. A defective sanction vitiates the proceedings, rendering the prosecution legally unsustainable.

48. Since Section 19(1)(c) of the PC Act mandates that a sanction must be accorded either by the appointing authority or an authority of equivalent or higher rank, a lower-ranked officer like PW.3 was wholly incompetent to

grant a sanction. The 2016 Gazette Establishment list of Central Railway, which classifies officers by grade, further confirms this rank hierarchy beyond dispute. The legal consequence is that the sanction is void, illegal, and without jurisdiction, striking at the root of the prosecution. The Hon'ble Apex Court has held the importance of a sanction granted by the competent authority in the case of *Nanjappa vs. State of Karnataka*, MANU/SC/0788/2015. The relevant para is reproduced below-

*“17. In the case at hand, the Special Court not only entertained the contention urged on behalf of the accused about the invalidity of the order of sanction but found that the authority issuing the said order was incompetent to grant sanction. The trial Court held that the authority who had issued the sanction was not competent to do so, a fact which has not been disputed before the High Court or before us. The only error which the trial Court, in our opinion, committed was that, having held the sanction to be invalid, it should have discharged the accused rather than recording an order of acquittal on the merit of the case. As observed by this Court in Baij Nath Prasad Tripathi's case (supra), the absence of a sanction order implied that the court was not competent to take cognizance or try the accused. Resultantly, the trial by an incompetent Court was bound to be invalid and non-est in law”.*

The Hon'ble Court affirmed that a sanction granted by an authority not competent to remove the accused from service is invalid, such sanction is invalid. Sanction must be imposed by the authority competent at the time of the offence and at the time of granting the sanction.

49. Despite the prosecution asserting that repeated conversations regarding the alleged demand of illegal gratification had taken place between the appellant and the complainant on their respective mobile phones, the investigation has demonstrably fallen short of the mandatory standards of

diligence, fairness, and evidentiary compliance.

50. The learned trial Judge erred in relying on the alleged electronic recordings of conversations during verification and the trap, even though these recordings were made on an SD card, later transferred to CDs, and the transcripts were prepared from those CDs. These are clearly secondary electronic records, and in the absence of a mandatory Section 65B certificate under the Evidence Act, they are wholly inadmissible. The learned trial Court's own finding discarding the C.D.R. (Exh.91) for lack of a certificate under Section 65B ought to have resulted in the rejection of all other electronic records. The mobile phones, SIM cards, and original SD card were never seized; no chain of custody was established; and no certifying officer verified the digital records.

51. Even otherwise, the transcripts (Exhs. 18, 20, 21) cannot be treated as substantive evidence, being comparable to panchanamas, usable only for corroboration when supported by substantive oral testimony, which is absent here. A plain reading of the transcripts shows that they do not contain any demand for illegal gratification, nor do they show that the appellant called the complainant to the Maharajbagh Club; these facts stand admitted by the trap-laying officer, PW-5 and the Investigating Officer, PW-7. The unexplained notations A(M) and A(S) further weaken the prosecution's reliance. The voice identification evidence is equally inadmissible since it is based on the same unproven electronic material. Once this inadmissible electronic evidence is excluded, the chain of proof collapses, as the remaining evidence clearly

shows that no demand of illegal gratification was made at any stage.

52. Upon careful consideration of the record and the submissions advanced, it is evident that the prosecution has placed heavy reliance on electronic evidence in the form of Micro SD Cards and Compact Discs marked as Exhibits 'C', 'K' and 'X', along with the voice spectrography report at Exhibit 79. However, it is found that the mandatory certificate under Section 65B(4) of the Indian Evidence Act has not been brought on record, rendering the said electronic evidence legally inadmissible. It is further noted that the prosecution has failed to establish an unbroken chain of custody for the sealed envelopes, thereby raising a serious possibility of tampering and manipulation. The voice spectrographic analysis appears to have been conducted on selectively extracted words rather than continuous natural speech, which materially affects the scientific reliability of the process. The specimen voice of the accused was not shown to have been recorded with voluntary consent or under judicial authority, and therefore the foundational material itself stands vitiated. The expert opinion at Exhibit 79, being in the nature of corroborative evidence, does not disclose the margin of error, calibration of instruments, or procedural safeguards, and in the absence of independent corroboration, cannot be treated as substantive proof. Consequently, this Court is of the considered view that the electronic evidence and the expert opinion relied upon by the prosecution do not inspire confidence and cannot be safely made the basis for sustaining the conviction, particularly when the foundational fact of demand of illegal gratification has not been proved beyond reasonable doubt.

53. These cumulative lapses assume even greater significance in view of the Criminal Manual issued by the Bombay HC 1978, Rule 24, i.e. Rules for the production, Use and Recording of the Tape-Record Evidence in Courts. This mandates that in cases involving electronic evidence, such as tape-recorded or digital recordings, the Investigating Officer must ensure proper sealing, safe custody, accurate documentation, and timely forwarding of such articles to the Court. Rule 24 further requires that all electronic devices and storage media be produced in their original form, accompanied by a clear panchnama, and, where applicable, certification of correctness, to enable the Court to determine authenticity and admissibility. The prosecution's failure to comply with this mandatory procedural safeguard constitutes a serious infraction that vitiates the credibility of the electronic evidence relied upon. The absence of a 65B certificate renders the alleged transcripts wholly inadmissible in evidence. These omissions are not minor technical defects but constitute fatal procedural lapses which directly undermine the substratum of the prosecution's case. The Hon'ble Apex Court held in the case of ***Ravinder Singh @ Kaku V. State Of Punjab, 2022 LiveLaw (SC) 461*** that such electronic evidence cannot be relied upon in law unless compliance with Section of 65B of the Evidence Act. Relevant para 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”.*

The prosecution was duty-bound to comply with statutory requirements and the mandatory procedural directives under Rule 24 of the Criminal Manual to secure the integrity of electronic evidence. Their failure to do so renders the alleged telephonic demand wholly unsubstantiated, inadmissible, and unreliable for the purposes of establishing the essential ingredient of “demand” under the PC Act.

54. Before proceeding further this Court would like to discuss the cases cited by the appellant.

*Rakesh Kapoor -Vs- State Of Himachal Pradesh, (2012) 13 SCC 552,-*

In this case, the appellant, a government officer, was convicted under the Prevention of Corruption Act (PCA) on allegations of demanding and accepting illegal gratification. The Supreme Court found that the prosecution failed to prove the essential ingredients of demand and acceptance, which are mandatory for establishing an offence under Section 7 or 13(1)(d) of the PC Act. The Court held that mere recovery of money from the accused is not sufficient to convict unless it is proved beyond a reasonable doubt that there was a prior demand and voluntary acceptance of the bribe. The complainant's evidence was found unreliable, and the prosecution's version was inconsistent and lacked corroboration. Accordingly, the conviction was set aside, and the appellant was acquitted. In the present factual matrix, the prosecution has failed to prove the demand from the accused. The prosecution has failed to establish the foundational requirement of the accused's demand. In his

deposition, the complainant made only a bald assertion that the accused demanded money. however, he failed to specify the time, place, or circumstances under which such alleged demand was made. This omission strikes at the very root of the prosecution's case. Furthermore, the post-trap panchanama procedure was not conducted in the prescribed form, thereby raising serious doubts regarding the integrity of the trap proceedings. The inconsistency as to the side on which the tainted money was allegedly kept further undermines the credibility of the complainant's testimony and reveals material contradictions that go to the heart of the prosecution's version. Further, IO has deposed that he cannot conclusively determine whether the demand was made by the accused. The Court finds the following paragraph relevant to the present factual matrix-

*“22. In the case on hand, though the prosecution relied heavily on the evidence of PW 1, the complainant, that the demand was made to him over mobile phone, admittedly the call details have not been summoned. No doubt, the statement of PW 1, according to the prosecution is corroborated by Ashwani Bhatia (PW 3) who stated that he overheard PW 1 saying that he had brought the money, when the latter went to the office of the appellant in the evening of 5-5-2003. Interestingly, the IO who was examined as PW 18 has mentioned that PW 1 received the demand from the accused over landline and, hence, he could not secure those call details. Whatever may be the reason, the fact remains that except the oral testimony of PWs 1 and 3, there is no other proof in respect of the demand of bribe money and the IO could not collect the call details as stated by PW 1 from the department concerned. Accordingly, the learned Senior Counsel for the appellant is right in contending that there is no material/evidence for the demand of bribe. In the light of the categorical enunciation in Banarsi Dass [(2010) 4 SCC 450 : (2010) 2 SCC (Cri) 864], in the absence of the demand and acceptance, the accused is entitled to the benefit of doubt. In addition to the same, in the case on hand, even the official witness, Shri Madan Singh, who helped in the search of the accused Municipal Commissioner, was examined as PW 14 but did not support the prosecution case and turned hostile.”*

55. *Chandrasen Kisanrao Chauhan v. State of Maharashtra, Cri.. Appeal No. 104/1999.* In this appeal, the accused, a public servant, was prosecuted for allegedly demanding and accepting illegal gratification under the PC Act. The prosecution's case rested primarily on the testimony of the complainant and the tape proceedings. The Court examined the evidence and found that the prosecution failed to establish the crucial element of demand because the complainant's version was inconsistent and lacked clarity regarding the circumstances, timing, and manner of the alleged demand. Further, the trap proceedings suffered from procedural lapses, including contradictions regarding the recovery, handling of tainted currency notes, and inconsistencies in the panchanama. The Court held that mere recovery of tainted money is insufficient to establish guilt unless the prosecution proves, beyond reasonable doubt, that the demand and voluntary acceptance were made. Owing to these material deficiencies and inconsistencies, the Court extended the benefit of doubt to the accused and set aside the conviction. In the present factual matrix of the case, the inconsistency in the complainant's statement is *prima facie* evident. PW-1 initially claims that the accused demanded ₹1,00,000/- on 4.12.2012. However, during cross-examination, PW-1 is unable to state the exact time of the alleged meeting and further admits that the accused had no role in preparing the bills, handing over the site, or supervising work after the tender was accepted. This is inconsistent with his allegation that the accused demanded money for "preparing the agreement", thereby undermining the prosecution's theory of demand. The

Court finds the following paragraph of this judgment relevant to this factual matrix-

*“29. At this juncture, it would be relevant to refer to the judgments of the Honourable Supreme Court / this Court in the following case:*

*In case of **Ajrun Bajirao Kale vs. State of Maharashtra**, reported in **2009 ALL MR (Cri) 85**, this Court held that demand of bribe is a foundation in a case under Prevention of Corruption Act. Mere acceptance of money, by itself, would not be sufficient for the purpose of convicting the accused who is charged with an offence punishable under Sections 7, 13(1)(d), 13(2) of the said Act. On perusal of the said judgment it further appears that this Court has placed reliance on the judgment of the Apex Court in case of **Sat Paul vs. Delhi Administration (AIR 1976 SC 294)** and **Pandharinath Shelke Vs. State of Maharashtra (2005(2) Bom.C.R. (Cri) 940)**.*

*In case of **Banarasi Dass Vs. State of Haryana (2010 AIR SCW 2282)**, the Honourable Supreme Court held that mere proof of recovery of bribe money from accused is not sufficient to sustain conviction under the provisions of Prevention of Corruption Act. In case of **Avinash Sitaram Garware vs. State of Maharashtra (2008 ALL MR (Cri) 15)**, this Court held that if prior demand of money by accused is not proved, rest of the prosecution case will have to be read with great caution and circumspection. In cases where a person is charged with offences under the P.C. Act, he is required to refute the presumption of guilt contained in the said Act but the burden on him is not heavy. He has not to establish his defence beyond reasonable doubt. He may rebut the presumption by showing a mere preponderance of probability in his favour.*

*In case of **Subhash Parbat Sonvane vs. State of Gujarat (2002 CRI.L.J. 2287)**, the Honourable Supreme Court held that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d)(i) of the P.C. Act. In Sections 7 and 13(1)(a) and (b) of the Act, the Legislature has specifically used the word 'accepts' or 'obtains'.*

*Yet, in case of **V. Venkata Subbarao v. State represented by Inspector of Police, A.P (2007 CRI.L.J. 754)**, the Honourable Supreme Court held in para 24 that In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved.*

*In case of **State of Maharashtra vs. Dnyaneshwar (2010(1) Bom.C.R.(Cri) 247**, the Honourable Supreme Court held that the demand of illegal gratification is sine qua non for constitution of*

*an offence under the provisions of Prevention of Corruption Act. For arriving at conclusion as to whether all ingredients of illegal gratification viz. demand, acceptance and recovery have been satisfied or not, facts and circumstances brought on record must be considered in their entirety. Presumptive evidence as laid down under Section 20 must also be considered, but, in respect thereof, it is trite law that, standard of burden of proof on accused vis-a-vis standard of burden of proof on prosecution would differ. Even in a case where burden is on accused, prosecution must prove foundational facts.*

*In case of **Ramprakash Arora vs. State of Punjab (AIR 1973 SC 498)**, the Honourable Supreme Court held that there should be independent witness from which corroboration could be found of the evidence given by the prosecution witnesses.”*

56. *Murli And Another -Vs- State Of Rajasthan, (2009) 9 SCC 417- the Hon’ble Supreme Court emphasised that unless a panch witness is shown to be truly independent and his testimony inspires confidence, courts cannot place reliance on recovery or corroborative evidence supported solely by such a witness. Weak or doubtful panch testimony breaks the chain of circumstances. In the present factual matrix, the complainant's version is inconsistent regarding the trap incident. Further, the panch witness was unable to clearly recount the exact sequence of the incident, casting doubt on the prosecution's story. The Court finds the following paragraph of the judgment relevant-*

*“34 The contents of the Panchanama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the Panchas or the concerned person in the witness box. Again, even if we accept the extreme preposition, anything and everything stated in the Panchanama can be read as the substantive evidence, still the fact remains that in this case, the witness who has supposed to have made the statement to the Magistrate, is not given an opportunity to explain the same. The portion marked from X to Y is in Column No. 7 of the Panchanama, where he had made the statement as above. However, there is no cross-examination or no question put to him*

*about the contents of Column No. 9, where he has taken the name of Heera. The statement in Column No. 7 amounts to his previous statement and unless he was confronted with the statements specifically and asked to explain, such statement cannot be used. It is trite law that a previous statement of the witness, even if admissible in evidence, cannot be used against the witness, unless the witness is confronted with the same and his attention is invited.”*

57. *Ramrao Satyanarayan Ramod -Vs- The State Of Maharashtra Criminal Appeal No. 544/2004*, -In this case, this Hon’ble Court categorically held that the statutory presumption under Section 20 of the Prevention of Corruption Act is not automatic and cannot be invoked mechanically. The presumption arises only upon the foundational fact of “demand” of illegal gratification being proved through clear, cogent and reliable evidence. Unless the prosecution establishes, beyond a reasonable doubt, that the accused had in fact made a demand for illicit gratification, the Court cannot draw the presumption of culpable intention merely from recovery or other ancillary circumstances.

58. In the present factual matrix, the Investigating Officer himself conceded in unequivocal terms that no demand for illegal gratification was ever raised by the accused. Such an admission strikes at the very root of the prosecution's case, as the essential ingredient for attracting the presumption under Section 20 stands wholly unsubstantiated. In the absence of proof of demand, the statutory presumption is rendered inapplicable, and the prosecution’s case collapses for want of its most fundamental requirement. The relevant paragraph of said judgment is reproduced below-

*“25...The said panch was working as a Tahesildar. It is difficult to believe that the accused and the panch did not know each other and that in the presence of such a person, a demand would be made, the complainant and the panch would go back and come again after some time with money, and the accused would accept the same. Reliance in this respect can be placed on the judgment Apex Court in the case of the State of the of Andhra Pradesh Vs. T. Venkateswara Rao reliance in this respect can also be placed judgment of the Apex Court in the case of V. Venkata Subbarao Vs. State cited supra wherein it has been held that the presumption of demand and acceptance under Sec. 20 of the Prevention of Corruption Act [49 of 1998] cannot be raised when the demand by the accused has not been proved.*

59. *Jagan Prabhakar Gawai -Vs State Of Maharashtra Criminal Appeal No. 187/2012-* The demand for illegal gratification is a *sine qua non* for conviction under Section 7 / Section 13 of the PC Act. Mere recovery of tainted currency notes from the accused, without credible proof of prior demand, is insufficient. Further, this Court held that pre-trap and post-trap panchanamas, ultraviolet/anthracene tests, and the recovery of marked notes must be scrupulously conducted and documented. Any significant procedural or investigative lapse, omissions in examining neutral witnesses, or inconsistencies between the panchanama and testimony undermine the reliability of the trap. The sanction to prosecute under the PC Act mandatory before trial. Where the evidence on record suffers from material inconsistencies or omissions, the benefit of reasonable doubt must go to the accused. The relevant para has been cited below-

*“30. Reliance is placed on the principles laid down N. Vijayakumar v. State of Tamil Nadu, (2021) 3 SCC 687, wherein the Hon’ble Supreme Court has consistently held that proof of demand of illegal gratification is a sine qua non for establishing an offence under Sections 7 and 13(1)(d) of the PC Act, and that mere recovery of tainted notes or acceptance without proof of*

*demand cannot form the basis of conviction. Further, the sanction to prosecute must reflect conscious and independent application of mind by the competent authority; a mechanical sanction vitiates the prosecution. The relevant paragraph 26 and 27 are reproduced as under.*

*26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in the case of C.M. Girish Babu v. CBI. Cochin, High Court of Kerala (2009) 3 SCC 779 and in the case of B. Jayaraj v. State of Andhra Pradesh (2014) 13 SCC 55. In the aforesaid judgments of this Court while considering the case under Sections 7,13(1) (d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court.*

*27. The relevant paragraphs 7, 8 and 9 of the judgment in the case of B. Jayaraj (supra) read as under :*

*“7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P [(2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and C.M. Girish Babu v. CBI[(2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1].*

*8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW*

9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d) (i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1) (d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand of 2020 As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.”

The above said view taken by this Court, fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cell phone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a “possible view” as such the judgment of the High Court is fit to be set aside. Before recording conviction under the provisions of Prevention of Corruption Act, courts have to take utmost care in scanning the evidence. Once conviction is recorded under provisions of Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the

*view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record.”*

60. Upon a holistic examination of the evidence, this Court finds that the prosecution has failed to prove the essential ingredients of demand and acceptance of illegal gratification beyond reasonable doubt. The complainant and panch witnesses, who form the backbone of the prosecution's case, have offered testimonies riddled with contradictions, significant omissions, procedural irregularities, and demonstrable inconsistencies. The departmental witnesses affirmatively establish that the accused possessed no authority or discretion to influence the complainant's work, thereby negating motive, opportunity, or *mens rea*.

61. The chain of custody and authenticity of electronic evidence, which forms the crux of the prosecution narrative, stands unverified and unreliable owing to serious lapses admitted by both the complainant and the expert witness. The trap and verification proceedings do not inspire confidence due to the absence of personal search, discrepancies in the versions of PW-1, PW-2, and PW-5, and the Investigating Officer's failure to adhere to mandatory procedural safeguards.

62. Further, the sanction for prosecution is invalid, having been issued by an authority lacking the competence to remove the accused from service. This defect is fatal and vitiates the very cognisance of the case.

63. In light of the cumulative effect of these infirmities, material

contradictions in the testimonies of key witnesses, absence of proof of demand, lack of authority with the accused, unreliable electronic evidence, procedural lapses in investigation, and invalid sanction, the Court finds that the prosecution has failed to discharge its burden. The evidence on record does not establish guilt beyond reasonable doubt, and the benefit of every such doubt must necessarily accrue to the accused. The testimonies of PW-1 and PW-2, upon careful evaluation, are inconsistent, contradictory, and incomplete. Repeated lapses of memory, disowned statements, and omissions seriously affect the credibility of the prosecution's case. PW-3 and PW-4's evidence establishes that the accused had no discretionary authority, no control over allotment of work, bills, or tender acceptance, and therefore lacked both motive and opportunity. PW-5's investigative lapses and procedural irregularities, coupled with PW-6's flawed voice analysis, further weaken the prosecution's narrative. The defective sanction granted by an incompetent authority strikes at the jurisdictional foundation of the prosecution.

64. Having considered the evidence in its entirety, the Court concludes that:

1. The prosecution has failed to establish demand and acceptance of illegal gratification beyond reasonable doubt.
2. The accused had no authority, opportunity, or motive to commit the alleged offence.
3. The trap and verification proceedings are unreliable due to procedural lapses and inconsistencies in the testimony of key witnesses.

4. The electronic evidence is procedurally flawed and unreliable.

5. The sanction for prosecution was invalid, rendering the proceedings legally unsustainable.

In view of the cumulative effect of these observations, the Court holds that the prosecution has not discharged its burden of proof under the Prevention of Corruption Act. All reasonable doubts must be resolved in favour of the appellant. The case against the appellant is therefore unsustainable, and he is entitled to an acquittal.

### **ORDER**

(i) Criminal Appeal is Allowed.

(ii) The impugned judgment and order dated 17.09.2016 passed by the learned Special Judge, Nagpur, in Special Case No. 12/2012 is hereby quashed and set aside.

(iii) The appellant is acquitted of the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act.

(iv) Bail bond of the appellant stands discharged.

(v) Fine, if any, paid by the appellant be refunded to him.

**( NIVEDITA P. MEHTA, J.)**