



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

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*Reserved on: 31st January, 2025
Pronounced on: 15th May, 2025*

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CRL.A. 17/2015

SURENDER SINGH

S/o Sh. Sher Singh
R/o H. No.BH/692-B
East Shalimar Bagh
Delhi

.....Appellant

Through: Mr. N. Hariharan, Senior Advocate
with Mr. Vaibhav Sharma, Ms. Punya
Rekha Angara, Ms. Vasundhara N.,
Ms. Urvashi Sharma, Mr. Aman
Akhtar, Mr. Vinayak Gautam and Ms.
Sana Singh, Advocates.

versus

STATE

GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Shoaib Haider, APP for the State
with SI Naresh Kumar, PS Anti
Corruption Branch.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (*hereinafter "Cr.P.C."*), has been filed against the judgment dated 15.12.2014 whereby the Appellant Surender Singh has been convicted under Section 7 of PC Act, 1988 and *Order on Sentence dated 19.12.2014*



whereby he has been directed to undergo rigorous imprisonment for a period of one year in Corruption Case No. 13/2013, under Sections 7 and 13(i)(d) Prevention of Corruption Act, 1988 (*hereinafter "PC Act"*) arising out of FIR No. 05/2008.

2. *The case of the prosecution*, in brief, is that Kiran Chauhan filed a Complaint dated 15.02.2008 at Anti-Corruption Branch stating that on 07.02.2008, a quarrel broke between her husband, Kishan Pal Singh Chauhan, Chandan and Raju for which she made a call at number 100.

3. Head Constable Surender, Appellant along with 3-4 constables came and took her husband to the Police Post, Sector-16, Rohini. He demanded bribe of Rs.10,000/- to release her husband, but on repeated requests, agreed to accept Rs.4,000/-. In the telephonic conversation between her and HC Surender held on 15. .02.2008, the Appellant demanded a bribe, which was recorded in front of the Panch witness. A transcript was also prepared. It was agreed that the Appellant would come near DDA Park, Sector 16, Rohini, behind Police Post for collecting the money. A team of officials of ACB along with the Complainant and Panch witness was constituted, which laid a trap. However, accused/Surender Singh did not come to take the money and told the Complainant over the call that he would collect it some other day. The case was kept pending from 15.02.2008 to 19.02.2008, and then the case was registered on the basis of the recorded conversation.

4. The accused/Appellant was summoned to PS-ACB and after being confronted with the CD, he was arrested. His voice samples were taken and were sent to the FSL, Rohini along with the recorded conversation. As per the FSL report, the two voices matched.



5. On completion of investigations, Charge sheet was filed on 02.05.2013 against the Appellant for the offences punishable under Section 7 & 13 of PC Act, 1988.
6. **Cognizance of offences u/s 7 & 13 PC Act was taken**, and accused was summoned. The *Charge under S.7 of PC Act was framed vide Order dated 07.08.2013*, to which the accused pleaded not guilty and claimed trial.
7. The prosecution in support of its case examined 33 *prosecution witnesses*. The Statement of Accused under Section 313 Cr.P.C. was recorded in which he pleaded his innocence.
8. *Learned Special Judge, CBI* referred to the Call Details of the Complaint made to PW-29/Head Constable Satpal, previous Beat Officer, and PW-22/ASI Balkishan which established that on 07.02.2008 there was a quarrel which had taken place involving the husband of the Complainant and thereby, the occasion arose for the demand of bribery. Further reference was made to the testimony of PW-24/Kishan Pal Mann, Panch Witness about him joining the proceedings on 15.02.2008 and listening to the telephonic conversation between the Complainant and the accused wherein the bribe demand was negotiated to Rs.4,000/-, *thereby, establishing the offer of bribe to the accused*.
9. The learned Special Judge, CBI thus, concluded that there was demand of bribe by the Appellant, which the Complainant had agreed to pay and had even gone to the determined place for payment of bribe along with the entire raiding Team. *It was held that prosecution was able to prove that the accused had taken bribe from the Complainant and the offence under Section 7 of the PC Act stood proved beyond reasonable doubt.*



Consequently, the Appellant was convicted and sentenced to undergo rigorous imprisonment for a period of one year.

10. The ***grounds on which the Appellant has challenged the conviction*** dated 15.12.2014 under Section 7 of PC Act is that PW-6/Kiran Chauhan, Complainant and PW-20 Krishan Pal Singh Chauhan, her husband had not supported the case of the prosecution. PW-6 Kiran Chauhan had deposed in her testimony that she did not know the Appellant and had seen him for the first time in the Court. She denied having had any telephonic conversation with the Appellant on 07.02.2008 or 15.02.2008. Similarly, PW20 Krishan Pal Singh Chauhan did not support the case of the prosecution and was declared hostile.

11. It is contended that since the very foundation of the case of the Prosecution i.e. the Complainant herself did not support the case, the benefit was entitled to be extended to the Appellant.

12. It is further asserted that *CFSL Report EX. PW-10/A* in regard to the voice identification of Appellant, is inadmissible in evidence as PW-10 Dr. Rajender Singh, author of Report EX. PW10/A, was not a *Notified Examiner* in terms of Section 29-A of IPC, Section 79-A Information Technology Act, 2000 and Section 45-A Evidence Act and Section 79A of Information Technology Act, 2000. Under these Sections, only those Examiners who have been notified through Gazette by Central Government, can examine the electronic evidence.

13. Further, Report Ex.PW-10/A is a false and fabricated document inasmuch as PW-10, Rajender Singh stated that he had prepared the Report on 16.02.2010 whereas the Report Ex.PW/-10/A is dated 16.01.2010. Also,



neither the Forwarding letter Ex.PW-10/DA nor the copy of RC Ex.PW-10/B mentioned about sending of *sample seal*, which fact is confirmed by PW-19/HC Jitender.

14. Moreover, the CDR Ex.PW-2/C is inadmissible in evidence for the reason that the Certificate Ex.PW-2/E accompanying the CDRs Ex.PW-2/C, is not in consonance with Section 65B of Evidence Act and law laid down in Achey Lal Yadav vs. State Criminal Appeal No. 1171/2012 decided on 04.09.2014.

15. It is contended that it has not been appreciated that the Call details EX.PW2/DA show that the Appellant did not make any call to the Complainant between 07.02.2008 to 19.02.2008; in fact, the complainant had made calls to the Appellant even on 17.02.2008 and the location of complainant at that time was PS Anti Corruption Branch.

16. Also, panch witness PW-24 Kishan Pal Mann who allegedly heard the telephonic conversation which took place between the complainant Kiran Chauhan and the appellant on 15.02.2008, is doubtful for the reason that he was a stock witness of Anti Corruption Branch, as is evident from his admission in his cross-examination that '*He had reported at least for 30-40 occasions on duty at ACB*'.

17. The evidence of PW-24 Kishan Pal Mann, panch witness is false on the face of it which is established from his deposition that mobile phone of the Complainant was seized by the Investigating Officer on 15.02.2008, but the seal after use, was not given to him on the same day. However, as per PW-26 Inspector Jai Prakash, seal after use, was given to the panch witness.



18. Further, Kishan Pal Mann deposed that the Memo Ex.PW-6/F was signed by him on 15.02.2008. Pertinently, Memo Ex.PW-6/F contains the number of the FIR even though as per the prosecution, the FIR was registered only on 19.02.2008.

19. The Appellant has claimed that FIR was registered in the instant case on 19.02.2008, but surprisingly no panch witness was associated by PW-26 Inspector Jai Prakash, who gave a most flimsy excuse that no *panch witness* was available, whereas the Duty Roster shows one Tarif Singh was present in PS Anti Corruption Branch on 19.02.2008 and DD Entry Ex.DW-1/A shows reporting of two Panch witnesses at PS Anti Corruption Branch on the said day.

20. It is asserted that the presence of *PW-25 ACP Naval Kishore* at Police Station Anti Corruption Branch at the time of registration of FIR, is most doubtful for the reason that as per information received by the Appellant under RTI Act, he was present at Police Training Academy, Jharoda Kalan on 19.02.2008. This is corroborated by the fact that in document Ex.DW-1/A, there was no entry regarding arrival or departure of ACP Naval Kishore in PS Anti Corruption Branch on 19.02.2008.

21. PW-12 ASI Dewan, deposed that rukka and FIR was handed over/entrusted to him by Inspector Kailash Chand. However, the FIR records that the FIR was entrusted to Inspector Jai Prakash. Further, PW-12/ASI Dewan, the Duty Officer stated that Inspector Jai Prakash did not come to him during his duty hours.

22. It is submitted that Ld. ASJ has not appreciated that there was no occasion, cause or motive on the part of the appellant to demand bribe from



the Complainant. Furthermore, the matter was compromised between the parties before the Appellant reached the spot, as deposed by PW-30/HC Surrender. He even denied that he had brought the parties, including the husband of the Complainant, to the Police Station. Most pertinently, the call of quarrel received by the Appellant on 07.02.2008 was filed by the Appellant on 08.02.2008 vide Ex.PW-4/DA.

23. The contradictions in the timing of the alleged calls made to the Appellants as per Call details Ex.PW-13/F and the testimony of PW-26/Inspector Jai Prakash, Raid Officer, have also been overlooked. Call details Ex.PW-13/F show that two calls were made by the Complainant to the Appellant on 15.31 and 15.52 hours on 15.02.2008.

24. The significant fact is that testimony of PW-26/Inspector Jai Prakash, Raid Officer is at variance. According to his testimony, initially the Complainant met him on 15.02.2008 at 04.10 P.M. but subsequently stated that the Complainant came to him at 03.10 P.M. After playing the recorded conversation, she went to the Senior officers and then came back.

25. He deposed that the first conversation took place between the complainant and appellant at 03:10 P.M. on 15.02.2008 and second conversation took place ten minutes after the complainant met him at 04:10 P.M. He denied the suggestion that no calls were made by the Complainant to the Appellant at 03:10 and 04:10 P.M. on 15.02.2008, but subsequently stated that the Complainant came to him at 03:10 P.M and remained in his room till 04:10 PM.



26. Pertinently, the Panch witness had deposed that both the calls were made by the Complainant in his presence. Inspector Jai Prakash denied that the Complainant had made the first call at 03:30 p.m. to the Appellant.

27. In the end, it is submitted that the evidence of the prosecution witnesses is full of contradictions and does not inspire any confidence. The case of the prosecution is shrouded with grave suspicion which in turns, strongly points to false implication of Appellant in the present case. The judgment and conviction of the Appellant is, therefore liable to be set aside.

28. **Submission Heard and Record Perused.**

29. Every country endeavours for good governance, righteous use of power and transparency in administration. Corruption is no longer a moral issue as it is linked with the search of wholesome governance and the society's need for re-assurance that the system functions fairly, free from corruption and nepotism. In Neera Yadav vs. Central Bureau of Investigation, (2017) 8 SCC 757, while so observing, it was noted that corruption has spread its tentacles almost on all the key areas of the State and it is an impediment to the growth of investment and development of the country. The Hon'ble Apex Court noted the ubiquity of corruption in the words of Kautilya, which reads as under:

“ Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least, a bit of the King's revenue. Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out (while) taking money (for themselves).



It is possible to mark the movements of birds flying high up in the sky; but not so is it possible to ascertain the movement of government servants of hidden purpose.”

30. As has been observed by the Hon’ble Apex Court in **Devinder Kumar Bansal vs The State of Punjab**, in an Anticipatory Bail Application in SLP(CRL) No.3247/2025 decided on 03.03.2025, avarice is a common frailty of mankind, it knows no bounds. Reference was made to Burke, who had cautioned two centuries ago that “*Among a people generally corrupt, liberty cannot last long*”. The corruption can bring the best of governance to a grinding halt and most flourishing economies to the ground.

31. This is also reflected when in the lament of **Romain Rolland** that France fell because there was corruption without indignation.

32. The corruption has become such a way of life and has assumed such magnitude that people at large in exasperation have almost given up and accepted Corruption as a way of life. A huge challenge thus, rests on the Government to tackle this menace of corruption as of utmost priority to ensure growth, liberty and good governance, to ensure that the liberties flourish and the economy grows.

33. In **Devinder Kumar Bansal** (supra) it was observed in the same context that corruption has become so rampant and is being indulged with impunity by highly placed persons that has led to an economic unrest in the country. If one was to give name to the sole factor impacting and arresting the progress of a society towards prosperity, undeniably it is corruption.

34. The present case is one such case, where the acts of the police even in attending to the regular calls of people in distress, are laced with acts of



corruption. No occasion is let go by the police officials to take it as an opportunity for undue gratification. Unfortunately, as in the present case, in an endeavour to ensure that no innocent person is convicted and the rigorous of law as contained in Prevention of Corruption Act are satisfied, some people as the Appellant are able to slip by by taking the benefit of doubt.

35. The offence is of year 2008, and Section 7 Prevention of Corruption Act, 1988, prior to amendment introduced by Act 16 of 2018 w.e.f. 26.07.2018, shall be considered.

36. For this purpose, Section 7 is reproduced as under: -

7. Public Servant taking gratification other than legal remuneration in respect of an official act:-

Whoever, being, or expecting to be a public servant accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or dis-service to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government Company referred to in clause (c) of Section-2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than 6 months but which may extend to 5 years and shall also be liable to fine.

Explanations:-

a. "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office and that



he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

b. "Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

c. "Legal remuneration". The words "Legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the Organization, which he serves, to accept.

d. "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or he is not in a position to do, or has not done, comes within this expression.

e. Where a Public Servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section." (emphasis supplied)

37. To understand the scheme of the Act, it is imperative to note that not only **demand** but also **offer** which ends in acceptance of Bribe, is an offence. This aspect is brought in Section 7 which deals with offer, and S.13 which deals with demand, both followed by acceptance to constitute the offence. The fine distinction between the two Sections is that under S.7 there is no *Demand but only an offer*, which is accepted by the accused.

38. The difference has been succinctly explained by the Constitutional Bench in Neeraj Dutta vs. State (Govt. of NCT of Delhi), (2023) 4 SCC 731, as under: -

“74.....



(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an **offer to pay by the bribe giver** without there being any demand from the public servant and the latter simply accepts the offer **and receives the illegal gratification**, it is a case of acceptance as per Section 7 of the Act. In such a case, **there need not be a prior demand by the public servant.**

(ii) On the other hand, if the public servant makes a **demand and the bribe giver accepts the demand** and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. **In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.**

(iii) In both cases of (i) and (ii) above, **the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue.** In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act. Therefore, **under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence.** Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act.” (emphasis supplied)

Charge under Section 7 PC Act.

39. With this Brief background, the facts of this case may be considered. The Appellant has been convicted under Section 7 PC Act, 1988.

40. The essential ingredients of an Offence under Section 7 are as under:



“(i) That the person **should be a public servant**;
(ii) That he should **accept or attempts to accept the gratification** for himself;
(iii) that it may be for doing or forbearing to do any official act or forbearing to perform official duty;
(iv) that the **gratification should be as a motive or reward**;
and
(iv), that it must be done in the exercise of his official function, favour or disfavour to any person.”

Whether Appellant was a Public Servant?

41. This *first aspect* does not merit much deliberation as there is no dispute that the **Appellant being Head Constable in Delhi Police, is a public servant** within the meaning Section 2(c) PC Act.

Occasion to seek favour:

42. The next aspect is whether there existed any circumstance which may have prompted the Complainant to seek favour from the Appellant to do or forbear to do something.

43. The incident commenced with a quarrel on 07.02.2008 between PW-20 Krishan Pal, husband of the Complainant and Chandan and Raju in regard to which the PW 6, the Complainant made a call at Number 100. The call led to registration of DD No. 43 Ex. PW4/DA which was recorded by the Appellant himself, which also noted that he had visited the house of the Complainant on the intimation of a quarrel, and the Appellant went to investigate it. The Appellant along with 3-4 Constables came to attend the call and took them to the Police Post, Sector-16, Rohini where they were detained till 11:36 PM and thereafter, released.



44. The testimony of the Complainant was corroborated by PW-20/Krishan Pal Singh Chauhan, who though erroneously gave the date of occurrence as 15.02.2008 instead of 07.02.2008, but supported the testimony of PW-6. He admitted there being a quarrel between him and Chander and that police was called and that they were taken to Police Post where they were detained till 11:36 PM and thereafter, released.

45. Further, PW-29/HC Satpal deposed that he was the posted as Beat Constable at Police Post Sector 16 Rohini. He received repeated calls from the Complainant on 07.02.2008 requesting him to approach the Appellant who was present in her house in connection with the Complaint against her husband.

46. Similarly, *PW30/Head Constable Surender* deposed about being on duty on 07.02.2008 and they visited the house of the Complainant.

47. *PW22/ASI Balkishan* also deposed on similar lines that he, along with four five police officials, had gone to the house of the Complainant and brought her husband along with others, to the Police Station. The Complainant had asked him to speak to the Appellant for release of her husband. She made three-four more calls to him in next few hours. At about 06:00 PM, the Complainant again spoke to him and told him about the quarrel of her husband and asked him to speak to the Appellant to not implicate her husband in those proceedings. He then, called the Complainant at about 07:30 PM seeking more details about the occurrence. The Complainant again called him and he sent his phone on *switch on* mode to the Appellant through constable. He admitted the Call Detail Record Ex. PW2/C of his phone and also admitted that there were eight incoming calls



made by the Complainant on 07.02.008 to him between 2:47 PM to 10:56 PM and four outgoing calls made from his phone to the Complainant on her mobile.

48. The witness tried to explain that these calls were in the context of dowry demand case of complainant's daughter in which he was the Investigating Officer. The learned Special Judge has rightly observed that in view of the clear and unequivocal statement made by him in his examination-in-chief, the exchange of Calls between him and the Complainant was established; the explanation given by him for the exchange of calls was of no consequence.

49. Therefore, there is conclusive evidence that on 07.02.2008, the Appellant along with 3-4 persons, had gone to the house of the Complainant on call of a quarrel and had brought the husband of Complainant to the Police Post, from where he was released at about 11:30 PM. During this time, the Complainant had made several calls to *PW29/HC Satpal* and *PW22/ASI Balkishan* requesting them to request the Appellant for not implicating her husband.

50. Thus, clearly there was an occasion for the Complainant to seek favour from the Appellant who was investigating in the quarrel between her husband and others, to ensure the release of her husband by the Police.

Whether there was offer to give bribe?

51. For an offence under Section 7 PC Act, 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, as has been held by the Apex Court in the case of B. Jayaraj vs. State of Andhra Pradesh, (2014) 13 SCC 55.

52. This principle of demand and acceptance being *sine qua non* for conviction under Section 7 was considered by the Apex Court in Neeraj Dutta (supra), wherein the Apex Court, in relation to Section 7 PC Act, held as under: -

“74...

...(i) if there is an **offer to pay** by the bribe giver **without** there being any **demand** from the public servant and the **latter simply accepts the offer and receives the illegal gratification**, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant....”

53. Thus, the testimony of the Prosecution witnesses, may be considered to ascertain if an offer of bribe was made by the Complainant to the Appellant.

54. According to the prosecution case, the Complainant PW-6 Kiran Chauhan gave the Complaint dated 15.02.2008, Ex.PW 6/A wherein it was stated that the Appellant had demanded Rs.10,000/- as bribe from the Complainant on the day of the incident i.e. on 07.02.2008, to release her husband.

55. Pertinently, PW-6 Kiran Chauhan, Complainant in her testimony gave a completely different version from that given to the Investigating Officer in her Complaint dated 15.02.2008, Ex.PW 6/A, which she admitted to have



been written by her and bears her signatures. She admitted that a quarrel had taken place between her husband and that on her call, Appellant and 3-4 police officials came and got the disputes settled. She deposed that Chander used to send police officials to her house, which compelled her to approach Anti Corruption Branch. She admitted using mobile phone number 9891060423.

56. *On being cross-examined by the learned Additional Pulic Prosecutor, PW-6 Kiran Chauhan denied that any demand of money was made by the Appellant for releasing her husband.*

57. PW-6/Kiran Chauhan failed to support the case of the Prosecution in regard to any demand or offer to pay the bribe. She was duly cross examined by the Ld. Public prosecutor, but she stood firm on her ground that there was no offer to pay any money, but because Chander used to send police officials to her house, she was compelled to approach Anti Corruption Branch.

58. The second material witness to this fact, was PW 20/Sh. Kishan Pal Singh Chauhan, husband of the Complainant, who also in his testimony deposed that police official did not demand anything from him. He did not have any talk with the police or with any person and that police officials also did not make any call with regard to the present case.

59. Further, clarificatsions have come in his cross-examination, wherein, he denied that Appellant had made a demand of Rs.10,000/- or asked him to bring the said amount from his wife, failing which he would not be released from the Police Station. He further denied that at about 11:30-11:45 PM, he was allowed to leave the Police Post or that he was told by the Appellant



that he had talked to his wife (PW-6 Kiran Chauhan) and asked her to arrange the money at the earliest, failing which the husband would get implicated falsely in a criminal case. He denied that any demand of money was ever made to him. He further denied that on the next date at about 10-11 AM, he came to their residence or that he could not meet the wife, as she was not present in the house. He also denied that his wife had told him that on 07.02.2008 (date of incident), he had sent Sardar Kashmir Singh, resident of their colony, to the Police Post or had approached ASI Bal Kishan and HC Satpal on phone, but the appellant refused to listen to them and remained persistent on his demand of Rs.10,000/-. He further denied that the amount of Rs.10,000/- was subsequently negotiated and reduced to Rs.4,000/-. So much so, he even failed to identify the appellant and deposed that he could not identify the appellant, as the same person, who had apprehended him or taken to the Police Post.

60. The testimony of PW 20 Sh. Kishan Pal Singh Chauhan also completely fails to prove that any demand of Rs.10,000/- or Rs.4,000/- was ever being made by the Appellant on 07.02.2008, or on the next date. In fact, there are no phone calls after 07.02.2008 proved between the respondent and the Appellant or the wife of the Appellant to show that the Respondent continued to make the demand. The only conversation which has come up after 07.02.2008, is of 15.02.2008, when the Complaint was made.

61. Further, there are certain pertinent facts which emerge from the testimony of these two witnesses. Evidently, the incident was of 07.02.2008, but according to the Complainant, no demand or offer of bribe was made. The Calls to fix the deal were made on 15.02.2008 and on the same day, the



Complaint was made. No explanation is forthcoming about the deafening silence between 08.02.2008 till 15.02.2008. There is also no explanation as to why the Complaint was not made on the day of incident or the next day.

62. Though the Complainant turned hostile about offer/demand of bribe, but it still needs to be examined if there is other cogent evidence of the prosecution to prove this fact, In this regard, it would be pertinent to refer to the observations made in the case of Neeraj Dutta (supra) that *“in the event the complainant turns ‘hostile’, or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting **in the evidence of any other witness** who can again let in evidence, either orally or by documentary evidence or **the prosecution can prove the case by circumstantial evidence**. The trial does not abate nor does it result in an order of acquittal of the Accused public servant.”*

63. Thus, imperatively, the evidence of other Prosecution witnesses becomes significant to to ascertain if any offer /Demand of bribe was made.

64. PW-29/Head Constable Satpal and PW-22/SI Balkishan though deposed that they were asked to speak to the Appellant by the Complainant on 07.02.2008 to seek release of her husband and not to implicate him in the alleged incident, but neither of these witnesses have deposed about there being any demand or offer of bribe to the Appellant.

65. There was no demand or offer of Bribe on 07.02.2008, the frantic calls were limited to desperate efforts to ensure the release of the husband of the Complainant by the appellant and other Police Officials on that day.

66. According to PW24/Kishan Pal Mann, panch witness, when the Complainant had made a call to the Apepllant on his mobile phone, it was



on speaker mode and bribe amount of Rs.4,000/- was negotiated by the Complainant with the Appellant and he as well as *PW15/Head Constable Jai Prakash* had heard this conversation.

67. *PW-22/SI Bal Kishan, PW15/ACP Jai Prakash, PW26/ACP Jai Prakash Meena and PW27/Karnail Singh* had also corroborated the mobile phone conversation on speaker mode between the Complainant and the Appellant.

68. The testimony of *PW24/Kishan Pal Mann* was sought to be challenged by the Appellant on the ground that he was a stock witness as admittedly he had stood witness at ACB in 30-40 cases, making his testimony unreliable.

69. However, the learned Special Judge has referred to the case of *Pyare Lal vs. State*, 1 (2008) DMC 806 Delhi and *Ashish Kumar Dubey vs. State* 2014 (111) ADS (Crl.) 421 wherein the witness was sought to be declared stock witness, but the court did not find merit in the argument. The learned Special Judge distinguished the judgment by observing that though the witness had reported to be a Panch witness about 30-40 times, but had never joined any proceedings on any of his prior visits. It was held that in the present case there was no evidence that Kishan Pal Mann was nominated in advance particularly for the present case. Even though the Complainant denied having made such a call to the Appellant, but there is overwhelming evidence to prove the telephonic conversation in regard to the demand of bribe and negotiation for the bribe amount.

70. The testimony of the *PW-24* and *PW-26* about the offer of bribe to the Appellant by the Complainant, gets corroborated by the Call Detail



Records Ex PW2/C of the phone of the Appellant, which was not challenged.

71. It was argued on behalf of the Appellant that there were material contradictions in the testimony of the witnesses. However, the testimony were essentially consistent any minor contradictions were of little significance as the testimony of the witnesses was recorded after six years of the alleged incident, as has been rightly observed by Id. Special Judge, CBI.

72. It is also pertinent to mention here that the Husband of the Complainant was detained in the Police Station till 11.30 PM thereby, establishing the frantic call being made by her to not only ensure release of her husband, but also to seek the favour for her husband to not be implicated in any case.

73. *Thus, the prosecution has successfully proved that offer was made by the Complainant and the bribe amount was negotiated from Rs.10,000/- to Rs.4,000/- to be paid to the Appellant at the agreed spot on 15.02.2008.*

Whether accepted/obtained/agreed to accept/attempted to obtain?

74. *The next important aspect which is required to be considered is acceptance of bribe by the Accused.*

75. The question is whether the Appellant has ‘accepted’, ‘obtained’, or ‘attempted to obtain’ any illegal gratification from the Complainant?

76. Section 7 of the Act uses “*obtain*”, “*accepts*” and “*attempt to obtain*”. So, to understand ‘demand,’ we must understand these terms.

77. The term “*obtain*” as per Cambridge dictionary means “*to get something, especially by asking for it, buying it, working for it...*”.



78. Oxford dictionary defines it to mean *“to come into possession of...”*.
79. The Black’s law dictionary defines it as *“to acquire; to get hold of by effort; to get and retain possession of”*.
80. The Apex Cour in C.K. Danodaran Nair vs. Govt. of India 1997 (9) SCC 477 has held that ‘Obtain’ *“means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1) (d) of the Act unlike an offence under Section 161 IPC, which, as noticed above, can be, established by proof of either ‘acceptance’ - or ‘obtainment’.”*
81. The term *“accepts”* as per Cambridge dictionary means *“to agree to take something”*.
82. Oxford dictionary defines it as *“to take willingly something that is offered; to say ‘yes’ to an offer, invitation, etc.”*
83. The Black’s Law dictionary defines it as *“to receive with approval or satisfaction; to receive with intent to retain”*.
84. The phrase *“attempts to obtain”* can only be understood with an understanding of the term *“attempt”* being applied to the term *“obtain”*.
85. This makes it pertinent to understand the concept of ‘attempt’ to committ an offence.
86. In Stephen Digest of Criminal law, at Art. 50, ‘attempt’ has been defined as under:-

“An attempt to commit a crime is an act done with intent to commit that crime and forming part of a series of acts which would constitute its actual



commission if it were not interrupted. To put the matter differently, attempt is an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and possessing except for failure to consummate, all the elements of a substantive crime; in other words an attempt consists in the intent to commit a crime, combined with the doing of some act adapted to but falling short of its actual commission; it may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted.”

87. In **Russell on Crimes** [Edn. 8, Vol. 1 at p. 145] two American definitions are quoted from Bishop :

Where the non-consummation of the intended criminal result is caused by an obstruction in the way, or by the want of the thing to be operated upon, if such an impediment is of a nature to be unknown to the offender, who used what seemed appropriate means, the punishable attempt is committed. Whenever the laws make criminal one step towards the accomplishment of an unlawful object done with the intent or purpose of accomplishing it; a person taking that step with that intent or purpose and himself capable of doing every act on his part to accomplish that object, cannot protect himself from responsibility by showing that by reason of some fact unknown to him at the time of his criminal attempt it could be fully carried into effect in the particular instance.

88. In the case of Asgarali Pradhania v. Emperor, AIR 1933 Cal 893 after referring to the aforesaid two authorities, it was observed that so far as India is concerned, it is beyond dispute that ***there are four stages in every crime***, the intention to commit crime, apprehension to commit crime and if



the third stage is successful, then the commission of crime. Intention alone followed by preparation, is not sufficient to constitute an attempt. It is only when following the preparation, an act towards commission of crime is done, that the attempt can be said to have been committed and if results in the completion of the act, then it amounts to commission of offence.

89. Similar observations were made in Queen-Empress v. Luxman Narayan Joshi, [(1900) 2 Bom LR 286] Sir Lawrence Jenkins, C. J., defined “attempt” as under:-

*An intentional preparatory action which failed in object through circumstances independent of the person who seeks its accomplishment. And in **Queen-Empress v. Vinayak Narayan** (1900) 2 Bom LR 304 the same learned Judge defined “attempt” as when a man does an intentional act with a view to attain a certain end, and **fails in his object through some circumstance independent of his own will.....**”*

90. Therefore, it clearly emerges that the attempt means an act which is done towards the commission of offence, but is frustrated by an intervening and supervening circumstance and not due to volition of the preparator of the crime.

91. Furthermore, the term “attempt” as defined in Black’s Law dictionary, is understood differently in Civil and Criminal context. In Civil it means “*an intent combined with an act falling short of the thing intended*” and in Criminal it means “*an effort or endeavor to accomplish a crime, amounting to more than mere preparation or planning for it, which, if not prevented, would have resulted in the full consummation of the act attempted, but which, in fact, does not bring to pass the party's ultimate design.*”



92. Thus, “*attempt to obtain*” would mean an effort made to acquire or get hold of something, but which could not be successfully completed or achieved, due to intervention of other circumstances, beyond the control of the perpetrator.

93. In the context of bribery, it would refer to an effort made by a person to acquire a bribe, but the act could not be completed on account of his apprehension or such other circumstance.

94. The case of the prosecution, as deposed by PW26/ACP Jai Prakash, in pre-raided proceedings, the Complainant was demonstrated the use of phenophthalenin powder and was instructed to do transaction in a manner so that he could hear the conversation. The raiding team left at about 06:00 PM and reached PS Sec.-16, Rohini and they waited for the accused near the weekly market. The Complainant called up the accused at about 06:00 PM, who assured to reach by 07:30 PM. They waited for him till 08:00 PM, when complainant again called up the accused, who told her that he would not come.

95. The case of the prosecution thus, is that the Appellant despite having agreed to accept Rs.4,000/- from the Complainant as bribe, failed to reach the agreed spot to collect the bribe amount. It is clearly a case where there was preperation for commission of offence, but the Appellant did not proceed further to the stage of attempt or acceptance of Bribe. Evidently, the crime ended at the stage of preparation and did not progress even to the stage of attempt.



96. There being no obtainment, acceptance or attempt to accept by the *the Appellant from his own volition*, no offence under S.7 PC Act can be said to have been committed.

Whether any motive or reward for the Accused?

97. Another significant aspect for commission of offence under S.7 PC Act is that there must be a *motive or reward for doing or forbearing to do any official act*. What thus, needs to be examined is whether there was any work of the Complainant pending with Accused on the date of making the Complaint on 15.02.2008.

98. The first most significant witness to prove the *offer* was PW-6/Kiran, Complainant but unfortunately she did not support the prosecution and in her testimony denied that any demand for bribe was made by the Appellant, though she admitted having been made the Complaint EX. PW6/A under her signatures. Pertinently, the Complaint E.PW6/A was made on 15.02.2008 about payment of Bribe to the Appellant, while the incident was of 07.02.2008.

99. Significantly,. it is also not disputed that was closed on the next day i.e. 08.02.2008.

100. Pertinently, on the said date there was no case pending in regard to which favour could have been sought by the Complainant, as her husband was released at 11.35 pm on the same day i.e. 07.02.2008 and the DD No. 43 Ex. PW4/DA stood already closed on 08.02.2008.

101. There was no favour to be sought by the Complainant after the closure of the DD Entry. No prudent person would continue to pursue the matter or



offer gratification despite the closure of the matter. Likewise, Appellant had no reason to accept bribe for nothing. What emerges from the repeated calls made by the Complainant is that she in her enthusiasm to somehow pin the Appellant, was persistently offering money, which the Appellant grudgingly agreed to accept but did not come to take the money.

102. The Apex Court in the case of A. Subair vs. State of Kerala (2009) 6 SCC 587 which was followed by the High Court of Karnataka in Chandrasha vs. The State of Karnataka, Criminal Appeal No. 200105/2015, decided on 16.02.2022 held that the most essential ingredient of the offence under S.7 PC Act is that there must be work pending on the date of demand/offer of bribe.

103. There is no evidence of any enquiry being pending against the husband of the Complainant in regard to which she would have sought favour by paying the Bribe.

Conclusion:

104. The Prosecution has failed to prove that the Appellant had made any demand or the Complainant had offered to pay the Bribe, for seeking any favour from the Appellant and most importantly, Appellant did not accept or even made an attempt to accept bribe from the Complainant.

105. In the given circumstances, the requisite ingredient for establishing the Offence under Section 7 of PC Act are not proved, thereby entitling the Appellant to an acquittal.

106. Consequentially, the impugned Judgment of Conviction dated 15.12.2014 and order on sentence dated 19.12.2014 is hereby, set aside and the Appellant is acquitted of the Offence under Section 7 of P.C. Act.



107. The present Petition and pending Application(s), if any, are accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 15, 2025

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