



2025:DHC:1026



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

% Reserved on : 12.11.2024
Pronounced on : 18.02.2025

+ **CRL.A. 407/2002**

PRITHVI SINGH YADAV

.....Appellant

Through: Mr.Sidharth Luthra, Senior Advocate,
Mr.Pramod Kumar Dubey, Senior
Advocate with Ms. Smriti Sinha,
Mr.Kartikeye Dang, Ms. Amrita
Vatsa, Mr. Shivam, Ms. Sara
Shrawani, Ms.Prachi, Mr. Vaibhav
Kapur, Ms.Swati, Mr.Shariq Seth,
Mr. Sahir Seth and Mr.Shariq Ansari,
Advocates

versus

C.B.I.

.....Respondent

Through: Mr.Ravi Sharma, SPP for CBI with
Mr.Premtosh K. Moshra, Mr.Praphull
Kumar, Mr. Ishann Bhardwaj,
Mr.Swapnil Choudhary & Ms.
Madhulika Rai Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed against the judgement of conviction dated 03.05.2002 and order on sentence dated 06.05.2002 passed by Special Judge, Delhi in Criminal Case No. 10/2000 arising out of RC No.7/91 - SIU – VIII/CBI/N. Delhi registered under Sections 7/13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988 (hereinafter, referred to as 'PC Act').



Vide the impugned judgement, the appellant was convicted for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of PC Act. Further, vide impugned order on sentence, he was directed to undergo rigorous imprisonment for a period of five years along with fine of Rs. 5,000/- on each count, in default whereof, he was directed to undergo further rigorous imprisonment for a period of six months. Both the sentences were directed to run concurrently.

2. The facts in nutshell are that as per prosecution case, the complainant *Afrik Singh* claiming himself to be the managing director of M/s *Afrik Travels (P)* approached CBI office on 26.09.1991 with the complaint of demands of bribe by the appellant who was posted as the SHO of PS IGI Airport. It was alleged that on 27.08.1991, the complainant was called by the appellant at his residence wherein he was informed of his involvement in seven criminal cases relating to forgery of passports pending investigation at PS IGI, vide FIR Nos. 432/91 to 438/91. The appellant demanded Rs. 3 lakhs for not arresting him. The complainant paid the demanded amount at appellant's residence on 28.08.1991. It was alleged that the complainant was arrested on 09.09.1991. Subsequently, the appellant again called the complainant to his residence on 24.09.1991 and informed him about passing of externment order. The appellant demanded Rs. 2 lakhs for cancellation of the externment order.

After registering the case, a trap was arranged by DSP *R.R. Sahai*. Two independent witnesses, namely *Manmohan Singh* and *Surjit Gandhi* were joined. The complainant arranged Rs. 2 lacs in cash in the form of 300 & 500 GC notes in the denomination of Rs. 500/- and Rs. 100/- respectively.



The number of the GC notes was noted and they were treated with phenolphthalein powder in the pre-trap proceedings. They were put in one polythene bag and given to complainant to hand over the same on demand by the accused. On 27.09.1991, the complainant along with his driver *Daljit Singh* and independent witness *Manmohan Singh* travelled to the complainant's house in his car. The independent witness was dropped off before they reached the appellant's house. The complainant was instructed to record the conversation on the mini cassette.

3. It is further alleged that though on the appellant's demand, the complainant handed over the polythene bag containing the sum of Rs.2 lakhs but the appellant demanded "50 more" for cancellation of the externment order. The complainant on coming out of the house gave the pre appointed signal however, the appellant left in a *Maruti* van bearing No. DDV 4885 towards Punjabi Bagh Club. He was followed and intercepted by the complainant on road no.77 in front of plot no. 31/77. The appellant dropped the polythene bag containing the money on the road and tried to run away. The witness *Manmohan Singh* picked up the polythene containing the money. The appellant's hand wash was taken at the spot. During investigation, transcript of the conversation recorded in the cassette was prepared and filed with charge sheet.

4. In the trial, a total of 20 witnesses were cited by the prosecution to prove its case. The complainant *Afrik Singh Lobana* was examined as PW1. The independent witnesses Mr. *Manmohan Singh* and *Surjit Gandhi* were examined as PW2 and PW4 respectively. DSP *R.R. Sahai*, who was the Trap Laying Officer (TLO), was examined as PW5. Inspector *S.B. Shankar* was



examined as PW19. Inspector *Roy Alexander* was examined as PW20. Besides above, the other witnesses were formal in nature relating to various aspects of investigation.

On the other hand, the appellant, in his statement recorded under Section 313 Cr.P.C. claimed that he was innocent and claimed false implication by the complainant, CBI and one *S.S. Bhatnagar*. In his defence, the appellant had examined six witnesses. Appellant alleged prior enmity with CBI officials and in this regard, examined one H.C. *Ved Prakash* as DW5.

5. Pertinently, the appellant was charged for two instances of the alleged demand i.e., first demand of Rs 3 lacs on 28.08.1991 and later, the second demand of Rs 2 lacs for which the trap was laid. The Trial Court vide the impugned judgment however, concluded that the CBI failed to prove the first demand but the latter demand of Rs. 2 lacs was proved.

6. Mr. Luthra, learned Senior Counsel appearing on behalf of the appellant submitted that the prosecution miserably failed to prove even the foundational facts and in light of the decision of the Constitutional Bench of the Supreme Court in Neeraj Dutta v. State (Government of NCT of Delhi)¹, the presumption of fact with regard to the demand and acceptance of illegal gratification could not have been made by way of inference. Even otherwise, the externment order which is stated to be the very basis of the alleged demand never existed.

He submits that neither the complainant, nor any of the independent witnesses have supported the prosecution case on any material aspect. None

¹ Neeraj Dutta v. State (Government of NCT of Delhi) , reported as (2023) 4 SCC 731



of the witnesses stated that they heard the appellant demand money. In respect of the audio tape containing the alleged demand, it is submitted that the guidelines laid down by the Supreme Court in Ram Singh and Others Vs. Col. Ram Singh,² reported as **1985 (Supp) SCC 611** have been violated and the prosecution also failed to establish the identity of the voices recorded in the cassette. Further, the authenticity and admissibility of the recorded conversation is also doubtful as the sealed tapes were opened without orders of the Court. There had also been numerous lapses in its storage and handling.

7. The allegation of acceptance of GC notes by the appellant is also doubted by contending that the GC notes were not seized from the appellant's possession and further the circumstance of the wash of his hand turning pink is of no substance as the appellant never touched the GC notes. It was further contended that neither any site plan was prepared of the appellant's house, nor any independent witness was joined for the post trap proceedings. Reliance was placed on testimony of DW1 to argue that the place where the post trap raid took place does not exist.

8. Lastly, it is submitted that the appellant was subjected to a witch-hunt and *malafide* investigation by the CBI officials who were having a grudge with him because of a prior quarrel relating to case of one *Gurmit Kaur*, which CBI wanted to take over without registration of the case. It was also contended that it was unusual for the SIU-VIII to investigate trap cases as that was the domain of Anti-Corruption Branch (ACB) and no explanation has been provided for the same.

² Ram Singh and Others Vs. Col. Ram Singh, reported as **1985 (Supp) SCC 611**



9. *Per contra*, learned SPP for CBI defended the impugned judgment. Relying on Neeraj Dutta (Supra) it was argued that circumstances preceding and succeeding the trap can be taken into account to prove the offence even in cases where the complainant and witnesses turned hostile. He submits that though the independent witnesses have not supported the prosecution story in its entirety, the material aspects of the raid stand corroborated. The discrepancies if any, are not fatal to the prosecution case. It is further submitted that the case of the prosecution has been proved beyond doubt by the virtue of the depositions of TLO, PW15/*Lik Ram*, PW18/*K.C. Sharma*, PW19/*S.B.Shankar* and PW20/*Roy Alexander* who were all parties in the raid and even uncorroborated evidence of police officers can be relied upon by the Court. Reliance in this regard has been placed on the decision of Supreme Court in Hazari Lal v. State (Delhi Admn.)³.

10. Relying on M. Narsinga Rao v. State of A.P.,⁴ it was contended that the complainant was won over by the appellant. With respect to the audio tape, it is submitted that the same was transcribed into a memo by PW18/*K.C. Sharma* at the spot and signed by complainant and PW2/*Manmohan Singh*, who later, in trial admitted their signatures on the same. Further, the tape was also transcribed in court by the complainant and PW18 and no major discrepancies were found in the two versions. Both the complainant and appellant had refused to give specimen of their voice samples despite the prosecution seeking the same. The non-existence of an externment order does not affect the prosecution case as for establishing an offence under PC Act, it is not necessary that the accused actually intended

³ Hazari Lal v. State (Delhi Admn.), reported as (1980) 2 SCC 390.

⁴ M. Narsinga Rao v. State of A.P., reported as (2001) 1 SCC 691



to fulfil his promise. Reliance in this regard is placed on Chaturdas Bhagwan Das Patel v State of Gujarat.⁵ It was submitted that CFSL analysis of appellant's handwash confirmed the presence of acceptance of bribe which the appellant failed to explain and thus presumption under Section 20 of the PC Act was rightly drawn against him. Lastly, reliance is placed on the decisions of Supreme Court in State of Rajasthan v. Kishore⁶ and Amar Singh v. Balwinder Singh⁷ to contend that some irregularity in investigation on behalf of the investigating officer would not be fatal to the prosecution case.

11. In rejoinder, Mr Luthra submitted that there are major discrepancies in the transcripts prepared in Court at the time of recording of statements of the complainant and PW18/K.C. Sharma. It is contended that the decision in Chaturdas (Supra) is distinguishable on facts as in the present case neither demand nor acceptance of gratification was conclusively established.

12. I have heard learned counsel for the parties and gone through the records.

13. To establish an offence under Section 7 or 13 of the PC act, the factum of prior demand for illegal gratification by the public servant has to be proved as a fact in issue. Mere proof of acceptance would not by itself be sufficient and proof of demand is a *sine qua non* for securing a conviction under Sections 7 and 13 (1)(d) (i) and(ii) of the PC Act. Gainful reference can be made to the decision in B. Jayaraj v. State of Andhra Pradesh⁸, where the Supreme Court has categorically observed that :-

⁵ Chaturdas Bhagwan Das Patel v State of Gujarat, reported as (1976) 3 SCC 46

⁶ State of Rajasthan v. Kishore, reported as (1996) 8 SCC 217

⁷ Amar Singh v. Balwinder Singh, reported as (2003) 2 SCC 518

⁸ B. Jayaraj v. State of Andhra Pradesh reported as (2014) 13 SCC 55



“ 8..... 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 in so far as the offence under Section 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.”

The Constitution Bench later affirmed the aforesaid decision in the case of Neeraj Dutta (Supra) and held that :-

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

88.1 (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and(ii) of the Act.

88.2 (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

88.3 (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

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

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

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

14. The Court may, when the foundational facts have been proved by relevant oral and documentary evidence, raise a presumption of fact while considering whether demand of illegal gratification has been proved by the prosecution or not. Needless to state that this presumption of fact is subject to rebuttal by the accused. This presumption is different from the one provided for in Section 20 of the Act. While the former presumption is discretionary in nature, the latter is a mandatory presumption. The Constitutional Bench of the Supreme Court in Neeraj Datta (Supra) holds:-

88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

15. Present is a case wherein the complainant as well as the independent witnesses have turned hostile. The factum of complainant turning hostile by itself would not lead to finding of acquittal. It is open to the prosecution to prove the demand of illegal gratification by relying on other witnesses and leading other including circumstantial evidence. When a witness turns “hostile” his evidence is not discarded automatically. Rather, a careful and circumspect endeavour is made to cull out that part of the testimony which is creditworthy and corroborated by other reliable evidence. This is contingent on the witness being able to withstand the scrutiny of cross examination.



Due reference in this regard may be made to Neeraj Datta (Supra), wherein it was held:-

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

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

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88.6 (f) In the event the complainant turns “hostile”, or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

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

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

16. The Trial Court held that the charge of initial demand of bribe of Rs 3 lacs by the appellant was not proved. Insofar as allegation of the latter demand of Rs. 2 lakhs is concerned, notably the complainant did not support the prosecution case in his examination-in-chief. The complainant, in his testimony stated that he had written the complaint (Ex.P.W. 1/A) based on



the dictation given to him by PW19/*S.B. Shankar* who told him that if he lodged a complaint against the appellant, he could get rid of the seven cases which were pending against him. The independent witnesses PW2/*Manmohan Singh* and PW4/*Surjit Gandhi* have both denied interacting with the complainant or seeing the complaint. In this backdrop, it is to be determined whether despite the complainant turning hostile, the prosecution has been able to prove the demand of Rs 2 lacs.

17. On the aspect of pre-trap proceedings, the PW5/TLO, deposed that constable *J.N. Mithani* duly gave the demonstration involving phenolphthalein and sodium carbonate and the pink solution was duly sealed and stored. He had also stated that the sealed bottles were signed and labelled by the witnesses. However, while both the complainant and PW2/*Manmohan Singh*, the independent witness stated that they could not admit or deny whether the pink solution was transferred, sealed and signed, the other independent witness PW4/*Surjit Gandhi* outrightly denied that any demonstration took place in his presence. The Trial Court observed that the said bottle does not bear either of their signatures. Constable *JN Mithani*, who allegedly gave the demonstration and was in a position to shed light on the factum of demonstration, was inexplicably not made a part of the pre-trap team. He was neither produced as a witness nor his statement under Section 161 Cr.P.C. was recorded. At this juncture, it is pertinent to note that all the testimonies record that the notes were treated with phenolphthalein, but none of them state that the polythene bag in which the notes were kept was also treated.

18. The next contradiction arises in context of the alleged phone call



made by the complainant to the appellant. TLO stated in his testimony that before leaving for the raid, the complainant rang up the appellant to inform him that he would get slightly late because of the rally. The complainant, on the other hand, deposed that he had actually called the police station and talked with one *Bharat Kumar*, a Sub-Inspector and mediator of the appellant. The testimony of PW2/*Manmohan Singh*, the independent witness also fails to corroborate the prosecution case as he states that he was not present in the room when the appellant made the phone call. Again, it is noted that *Bharat Kumar*, who could have shed light on the situation was not cited as a witness by the prosecution. In fact, not even a suggestion was given to the complainant seeking an explanation for this divergence from the prosecution story.

19. The variance in testimony of the complainant from the version of the prosecution becomes even more apparent when it comes to the alleged demand. The prosecution version has been already briefly summarised earlier and is not being reproduced for the sake of brevity. As per complainant, when he reached the house of the appellant, he noticed that appellant was going out in his van. Upon informing him that he had brought Rs. 2 lacs in cash, the appellant told him to get out and talk to him in his office. The complainant has categorically denied that the appellant demanded any money from him. He rather stated that after the appellant refused to take the money, he returned to the CBI officials who directed him to give money to the accused, failing which the case shall be cancelled. Thereafter, he gave chase to the appellant, intercepted him and requested him to take the money and took the keys of the appellant's van. He has



further stated that the appellant slapped him following which he also slapped him back. According to him, during this time the polybag containing cash fell down and was picked up by the CBI officials.

With respect to the post trap proceedings, complainant stated that the appellant was taken to a nearby building where complainant stood outside and hence did not witness the preparation of sodium carbonate solution, the accused's hands being dipped in the solution and the same turned pink.

20. Since the complainant has turned hostile, other witnesses must be turned to seek corroboration of the prosecution version on the crucial aspect of demand. PW2/*Manmohan Singh*, one of the independent witnesses deposed that he was dropped by complainant about 1 km away from the house of the appellant and he couldn't say whether or not complainant entered the house of the appellant. He also supported complainant's version by stating that upon his return, CBI officials had directed complainant to chase and intercept the appellant. He further stated that the polybag was picked up either by him or by CBI officials and he also refused having witnessed the post trap proceedings.

PW4/*Surjit Gandhi*, the other independent witness, also failed to corroborate the version of the prosecution on material aspects. He failed to corroborate the prosecution version of complainant going in the house of the appellant. He also did not recognize the driver of the van or witnessing the post trap proceedings.

21. The recovery of the GC notes in this case has been from a polythene bag lying on the road and not from the person of the appellant. Notably, the prosecution case from the inception has been that only the GC notes were



treated with phenolphthalein and not the polythene bag, however, there is no explanation as to how the solution turned pink from appellant's hand since no witness has stated that he ever touched the GC notes.

22. Another important aspect which merits discussion relates to the tape-recorded conversation. The tape-records are "documents" as defined in Section 3 of the Evidence Act which stand on no different footing than photographs. The very first requirement for making such recordings admissible is that the voice of the person alleged to be speaking must be duly identified by the maker of the record. If the maker denies that the voice is his, very strict proof would be required to prove the identity of the voice. Moreover, every possibility of tampering of the tape should be ruled out.

The Supreme Court in Ram Singh v. Col. Ram Singh (Supra) held that: -

32. Thus, so far as this Court is concerned the conditions for admissibility of a tape-recorded statement may be stated as follows:

- "(1) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.*
- (2) The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence — direct or circumstantial.*
- (3) Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.*
- (4) The statement must be relevant according to the rules of Evidence Act.*
- (5) The recorded cassette must be carefully sealed and kept in safe or official custody.*
- (6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances."*

Although learned SPP has sought to distinguish the abovementioned



decision by stating that it was rooted in the facts of that case as serious doubts had been raised about the recording therein, however, there is no merit in this contention and the general principles and safeguards laid down therein would be applicable to all cases where tape recordings are relied on.

23. In the present case, complainant, who was the maker of the recording, failed to identify his voice as well as the voice of the appellant in his testimony. That being the situation, strict proof was required to prove the identity of the recordings. TLO conceded in his testimony that he did not record the specimen of the voice sample of the complainant. He has stated that in the post trap proceedings, he handed over the cassette to PW18/ *K.C. Sharma* for preparation of the transcript. He further stated that no expert or technician had joined the trap proceedings. PW19/*S.B. Shankar* failed to identify the tape as it was not produced in Court. Moreover, in his testimony, he stated that he did not say whether the transcript was prepared from the original cassette or by playing its copy.

24. PW20/*Roy Alexander* conceded that the statement under Section 161 Cr.P.C. of PW18, who prepared the transcript, was not recorded. He further stated that he did not try to get the voices in the recording identified in presence of a Magistrate, nor did he obtain an order from court for breaking open the seal of the cassette for holding identification proceedings. He testified that when the unsealed tape was played before the witnesses, all the witnesses had identified the voice of the appellant, and moreover, PW10/*Umesh Singh* and PW16/*Subhash Chand* also identified the voice of complainant. However, the Trial Court observed that as per the case diary, PW10 could not identify the voice recorded in the cassette.



25. Various questions have also been raised regarding the handling of the tape and its storage. In this regard, TLO stated that he did not deposit the cassette in the *Malkhana* alongwith other case property and rather, handed over the same to PW20/Roy Alexander when he gave charge of the investigation to him. He further stated that he deposited the case property on the same day but didn't sign the *Malkhana* Register.

During the trial, PW7/Bir Pal, who was in charge of the *Malkhana*, had brought the original *Malkhana* register pertaining to September 1991 when the case properties were submitted. He however, failed to bring the movement register, where entry and exit and re-entry of case property is entered, of the period from 27.09.1991 till 24.07.1997. He further stated in his cross examination that there was no mention of pre-raid memo or its annexure carrying GC notes in the register. Neither did the deposit of CFSL form find a mention in the relevant entries. Though the recording of his testimony was deferred, he was never recalled. The effect of partial cross examination is not that the statement is rendered inadmissible. Some weight can still be attached to this statement, after applying the rule of caution of not acting upon the statement without it being materially corroborated. Reference may be made to decision of a Co-ordinate Bench of this Court in Krishan Dayal v. Chandu Ram,⁹ :-

I have given the matter my consideration and am of the view that the statement of a witness in examination-in-chief, which was admissible at the time it was recorded, cannot become inadmissible by reason of the subsequent death of the witness before cross-examination. The absence of cross-examination would undoubtedly affect the value and weight to be attached to the statement of the witness, but it would not render the statement inadmissible or result in its effacement. So far as the question is

⁹ Krishan Dayal v. Chandu Ram, reported as 1969 SCC OnLine Del 134



concerned as to what weight should be attached to such statement made in examination-in-chief the Court has to keep in view the facts and circumstances of each individual case. Some of the factors which may be borne in mind are the nature of the testimony, its probative value, the status of the witness, his relationship or connection with the parties to the case, a likely animus which may colour his statement and any other factor touching the credibility of the witness which may emerge on the record. Regard must also be had to the fact that the witness has not been subjected to cross-examination. The Court should see whether there are indications on the record that as a result of cross-examination his testimony was likely to be seriously shaken or his good faith or credit to be successfully impeached. The Court may also adopt a rule not to act upon such testimony unless it is materially corroborated or is supported by the surrounding circumstances. If after applying that rule of caution, the Court decides to rely upon the statement of a witness who was examined in chief, but who died before cross-examination, the decision of the Court in this respect would not suffer from any infirmity.

26. There are some other factors as well which need to be borne in mind to assess the overall circumstances. PW20/Roy Alexander stated that his investigation revealed that there existed no externment order against the complainant, which was alleged to be the very reason for the appellant demanding bribe in the first place. Moreover, it has been alleged that there existed prior enmity between the appellant and CBI officials. The genesis of this enmity was said to be the appellant refusing to hand over the custody of the case file of one Gurmit Kaur without registration of case by CBI. As per the testimony of DW5/HC Ved Prakash, the Trap Laying Officer was an interested witness and had prior enmity with the appellant. Testimony of PW19/S.B. Shankar would show complaint was addressed to SP, CBI SIU-VIII which normally used to deal with cases of cheating and forgery and the trap cases were investigated by the Anti-Corruption Branch (ACB) and no explanation has been given for the respondent veering off its normal course.



27. Though the reliance has been placed by the respondent on the decision in M. Narasinga Rao (supra), the same is distinguishable in as much as in that case the recovery of money was from the pocket of the accused therein, whereas in the present case the recovery has been shown from a polythene bag lying on the road and not the person of the appellant. In so far as the case of Chaturdas (Supra) is concerned, the factum of acceptance of gratification from the accused was duly established. The same, however, cannot be said for the present case.

28. On an overall assessment of the facts and circumstances of this case, it becomes clear that the prosecution case has been severely weakened by the complainant turning hostile. That by itself would not have been fatal to the prosecution, however, key elements of the prosecution case, as discussed in the previous paragraphs, are not supported by the two independent witnesses either. No site plan has been prepared of the appellant's house to bring some clarity as to the position of the trap party. Prosecution has not put forth any witness who can claim to have heard the demand by the appellant. Identities of the voices in the recording have also not been conclusively established. The procedure adopted by the prosecution has also raised doubts as to the handling and storage of the said tape. Mere transcripts cannot be used to establish that a demand took place without supporting evidence, which in this case is found to be lacking. Moreover, it is not the case of the prosecution that the cash was recovered from his pocket. The GC notes were lying in a polythene bag which was recovered from the road. From the starting, it has been the case of the prosecution that only the notes were treated with phenolphthalein. Keeping that in view, the



prosecution has failed to establish how the appellant's hands turned the sodium carbonate solution pink, if he only had contact with the polythene bag. In toto, the prosecution has failed to prove the foundational facts which are necessary for the Court drawing the presumption of the appellant having demanded the money.

29. Upon a careful analysis of the testimonies as well as the material placed on record, this Court is of the considered opinion that the allegations against the appellant under Sections 7, 13(1)(d) of PC Act are not conclusively proved. Consequently, the appeal succeeds and the appellant's conviction under the aforesaid sections is set aside. The bail bonds are cancelled and sureties stand discharged.

30. The appeal is disposed of in the above terms.

31. A copy of this judgment be communicated to the concerned Trial court alongwith the records and to the concerned Jail Superintendent for information.

MANOJ KUMAR OHRI
(JUDGE)

FEBRUARY 18, 2025/ry