



2025:DHC:10405



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 19.08.2025

Judgment delivered on: 24.11.2025

+ CRL.A. 228/2003
HAR SWARUP VERMA

.....Appellant

versus

STATE OF DELHI

..... Respondent

+ CRL.A. 238/2003
ASHOK KUMAR GUPTA

.....Appellant

versus

STATE OF DELHI

.....Respondent

Advocates who appeared in this case:

For the Appellant : Mr. M.L. Yadav & Mr. Prashant, Advs. in
CRL.A. 228/2003.

Mr. D.P. Singh, Sr. Adv. with Ms. Sonam
Gupta, Mr. Saumay Kapoor, Mr. Shiva
Pande & Ms. Ritvika Poswal, Adv. in
CRL.A. 238/2003.

For the Respondent : Mr. Sunil Kumar Gautam, APP for the
State.

Insp. Amarjeet Singh, SI Bheem Singh, PS
ACB GNCT of Delhi.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present appeals have been filed seeking setting-aside of the common Judgment of Conviction dated 31.03.2003 (*hereinafter* 'impugned judgment') and the common Order on Sentence dated



02.04.2003 (*hereinafter* '**impugned order**'), passed by the learned Special Judge , in CC No. 215/1994 arising out of FIR no. 13/991 registered at Police Station Anti-Corruption Branch, for the offences punishable under sections 7/13 of the Prevention of Corruption Act, 1988 (*hereinafter* '**PC Act**').

2. By the impugned judgment, both the appellants namely accused-Har Swarup Verma and co-accused-Ashok Kumar Gupta, were held guilty for the offences punishable under section 7 and 13(1)(d) read with 13(2) of the PC Act.

3. By the impugned order, both the accused persons were sentenced to undergo RI for a period of one and a half years in respect of their convictions under Section 7 & 13 (1) (d) read with Section 13 (2) of the P C Act and also to pay a fine of Rs.5000/-. The accused-H.S. Verma has been held guilty of an additional charge under Section 7 of PC Act and was also sentenced to undergo RI for a period of one and a half years and to pay a fine of Rs.5000/-. In default of payment of fine, the convicts would be required to undergo further RI for a period of six months and the substantive sentences were to run concurrently.

4. Succinctly stated, it is the case of the prosecution that, in the year 1991, both Sh. H.S. Verma and Sh. A.K. Gupta were employed in Delhi Development Authority (*hereinafter* '**DDA**') as Junior Engineers.

5. On 11.04.1991, one Som Nath/Complainant, went to the Anti-Corruption Branch and got his statement recorded to the effect that he



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was constructing his house on a plot in Sector-VI in Rohini (**‘the property’**) which was in the name of his wife and the original owner was one Ganga Dhar and that the construction was almost complete. It was alleged that the complainant had submitted 'B' and 'D' forms in Rohini Office of DDA on 22.03.1991 in the name of Ganga Dhar and had also deposited Rs.25/- *vide* receipt No.89006 dated 22.03.1991 regarding form 'D'.

6. According to the complainant, on 05.04.1991, co-accused-A.K. Gupta inspected the site and questioned him for raising construction prior to obtaining Form ‘B’ and thereby allegedly threatening demolition of the construction. The complainant claimed that A.K. Gupta told him to visit his office so that they can get his 'B' form filled. On 08.04.1991, the complainant visited the DDA Office at Sector-III, Rohini, where A.K. Gupta told the complainant that H.S. Verma would deposit the Form ‘B’ and get his work done, however, the complainant will have to pay Rs. 2,500/- to H.S. Verma. The complainant claimed that he agreed to pay the bribe amount out of helplessness.

7. Consequently, the complaint was lodged with the Anti-Corruption Branch at the behest of the complainant. Acting on the complaint, the Anti-Corruption Branch organized a trap on 11.04.1991. The complainant produced 25 GC notes of Rs. 100/-, which were treated with phenolphthalein powder. A *panch* witness was associated, and standard pre-raid formalities were completed.



8. Allegedly, the raiding party reached the DDA office around 12:30 p.m. on 11.04.1991. The complainant and the *panch* witness approached H.S. Verma, who accepted Rs. 2,500/-, with his right hand, from the complainant and kept the tainted notes in the left-side pocket of his shirt. The raid officer and his team immediately apprehended H.S. Verma, conducted the hand-wash and the pocket-wash tests, and recovered the tainted notes.

9. Consequently, the subject FIR was registered. The Sanction under section 19(1) of the PC Act was accorded by the competent authority. Thereafter, the charge-sheet was filed against H.S. Verma and co-accused A.K. Gupta for having obtained illegal gratification of Rs. 2500/- from the complainant.

10. The charges were framed against both the accused persons under Section 7 & 13 (1) (d) read with Section 13 (2) of the PC Act and additional charge was framed against H.S. Verma under Section 7 of the PC Act, *vide* Order dated 08.05.1995. Both the accused pleaded not guilty and claimed trial.

11. The prosecution examined total 11 witnesses in support of their case. PW-1/Som Nath was the complainant; PW-2/S.P. Jhakhanwal was the vice-chairman of DDA while PW-5/ Rajbir Singh Chauhan, PW-6/Virender Kumar Aggarwal and PW-11/Bhopal Singh were officials from DDA; PW-3/Vijay Kumar Jain was the *panch* witness present at the time of the raid; PW-4/ACP K.P. Singh was an official with Anti-Corruption Branch; PW-7/N.L. Prasad had received and conducted tests at CSFL; PW-8/Insp. Kaneal Singh was the raid



officer; PW-9/Insp. Tola Ram Mirwani, was the Investigating Officer; and PW-10/Subodh Kumar was MHC(M) posted at PS. Sabzi Mandi.

12. Statement under section 313 of the Cr.P.C. was recorded wherein both accused specifically denied the allegations of the prosecution and stated that they have been falsely implicated. Accused-H.S. Verma asserted that the complainant was running a general store from House No. 372, Block 13-3, Sector-6, Rohini, and that a dispute had arisen between them. Co-accused A.K. Gupta contended that he had no role in issuing Form 'B', and that Form 'D' could not have been issued without re-demarcation and the mandatory DPC. No defense evidence was led by the accused persons.

13. After due consideration of the evidence on record, the learned Special Judge observed that the evidence of the complainant and the *panch* witness, along with the recovery of the tainted money from H.S. Verma, and the positive phenolphthalein test of his hand wash and shirt pocket, proves beyond reasonable doubt that the accused had demanded illegal gratification from the complainant as a motive or reward for issuance of Forms 'B' and 'D' in relation to the construction of his house in Rohini and for not demolishing the same. It was further observed that it also stands established that on 11.04.1991, accused H.S. Verma reiterated the demand and accepted ₹2,500 from the complainant. Hence, both the accused were convicted and sentenced for the offences charged.

14. Aggrieved by the same, the present appeals have been filed seeking setting aside of the impugned judgment of conviction and



impugned order on sentence.

15. It has been urged on behalf of the appellants that the impugned judgment is contrary to law, is unsupported by the evidence on record and there are significant gaps in the case of the prosecution, for which benefit must enure to the accused.

16. It was contended that the complainant himself was not a trustworthy witness, having admittedly filed B & D forms under forged signatures of the registered owner, Ganga Dhar. Further, the prosecution failed to establish that the complainant's wife had in fact purchased the property or required any B & D forms. Significantly, the prosecution did not examine Ganga Dhar, the registered owner, which omission creates a serious lacuna in the prosecution story.

17. It was further argued that no demand of illegal gratification by the appellant has been proved and the essential ingredients of Section 7 and 13 of the P C Act are not established in the present case. The complainant's cross-examination reveals that he had been involved in several trap cases and was embroiled in multiple litigations, rendering him a "*stock witness*" of the Anti-Corruption Branch.

18. It was further submitted that the alleged handwash of the appellant did not exhibit any color when produced before the Court, contrary to the prosecution case. The bottles said to contain the handwash and shirt-wash (*Ex.P-28-Ex.P-30*) contained white liquid and not pink, casting serious doubt on the prosecution version.

19. It was also argued that in terms of Section 17(3) of the PC Act the investigation was mandatorily to be carried out by an Officer of



the rank of Deputy Superintendent of Police. However, it is an admitted case that the investigation, in the present case, was carried out by an Officer of the rank of Inspector, thereby vitiating the entire investigation.

20. The written submissions have been filed by the appellants and to buttress the arguments advanced, reliance has been placed upon *State of Maharashtra v. Dhyaneswar Laxman Rao Wankhede* (2009) 15 SCC 200; *State of Punjab v. Madan Mohan Lal Verma* (2013) 14 SCC 153; *Rajesh Gupta v. State through CBI* (2022) 20 SCC 793; and *State of Lokayukta Police, Devanagree v. C.B. Nagaraj* 2025 SCC OnLine SC 1175.

21. *Per Contra*, the Additional Public Prosecutor ('APP') for the State has vehemently opposed the present appeals by stating that there is no infirmity in the impugned judgment of conviction and the impugned order on sentence and the same warrants no interference. It was argued that there are no inconsistencies in the testimonies of the complainant and the material witnesses examined by the prosecution. Further, the chain of demand, acceptance and recovery stands proved beyond reasonable doubt in the present case.

22. It was submitted that the non-examination of Ganga Dhar or Nanki Devi, as well as the allegation of forgery by the complainant, are inconsequential and do not go to the root of the matter. These omissions are not material for determining the culpability of the accused under the PC Act.

23. It was submitted that the essential requirements of the *proviso*



of Section 17 of the PC Act stood fulfilled. *Notification No. F.2. (16)/67-V-514 to 517* dated 21.03.1968, *Notification No. F.2. (16)/67-V-1109* dated 19.05.1970 and *Notification No. F1 (10)/ 09- D0V 1555-1561* dated 15.03.1999 were issued by the State Government, thereby authorizing Inspectors to investigate the offences under the PC Act.

24. In support thereof, written submissions have been filed by the respondent and reliance has been placed upon *H.N. Rishbud v. State of Delhi* (1954) 2 SCC 934; *Union of India v. Prakash P. Hinduja* (2003) 6 SCC 195 and *Fertico Marketing and Investment Pvt. Ltd. V. CBI* (2021) 2 SCC 525, to argue that in any case, any illegality in the investigation does not vitiate the trial unless it is shown that a miscarriage of justice has been caused to the accused.

25. Hence, it was stated that present appeals are liable to be dismissed.

26. **Submissions heard and the written submissions along with the entire material on record has been perused.**

Analysis: -

27. At the outset, it is relevant to note that while dealing with an appeal against judgment on conviction and sentence, in exercise of Appellate Jurisdiction, this Court is required to reappreciate the evidence in its entirety and apply its mind independently to the material on record.

28. The criminal jurisprudence is premised on the principle that a conviction cannot be sustained on the basis of mere surmises or conjecture. It is thus for the prosecution to establish, by means of



cogent and credible evidence, each element of the alleged offence that too beyond reasonable doubt. The standard is not a mere formality but rather serves as an indispensable safeguard against the risk of wrongful conviction.

29. Further, the prosecution case must stand on its own legs and cannot derive strength from any perceived weakness in the defense. Consequently, where the story of the prosecution is marred with inconsistencies or evidentiary gaps, the benefit of such doubt ought to be extended to the accused.

30. It has been vehemently argued on behalf of the appellants that the investigation, as per the prosecution's own admissions, was carried out by police officials who were not authorized to investigate offences under the PC Act.

31. To address the same, it would be beneficial to understand the provision of Section 17 of PC Act, which reads as under: -

"17. Persons authorized to investigate -Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,--
(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;
(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,
shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:
Provided that if a police officer not below the rank of an



Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in 1[clause (b) of sub-section (1)] of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.”

32. It emerges from above that Section 17 of the PC Act embodies a statutory safeguard regulating which officers are competent to undertake investigation of offences under the Act. The provision begins with a non obstante clause, giving it overriding effect over the Code of Criminal Procedure. It mandates that, save in cases expressly permitted by a Magistrate, only police officers of prescribed seniority, Inspector (DSPE), Assistant Commissioner (in metropolitan areas), or Deputy Superintendent of Police (elsewhere), may investigate offences under the Act. The *proviso* reinforces this requirement by allowing an Inspector to investigate only where he is specifically authorized by the State Government through a general or special order. The second *proviso* elevates the threshold further for offences under Section 13(1)(b), requiring prior approval of a Superintendent of Police before investigation can commence.

33. It has not been disputed by the prosecution that the investigation in the present case has been conducted by the officers holding the rank of Inspectors. It has also been admitted by PW-9/Insp. Tola Ram Mirwani and PW-8/Insp. Kaneal Singh, that they are not aware of any other specific or general order authorizing Inspectors to investigate



and lay a trap for cases falling under the PC Act.

34. It is further an admitted position that *Notification No. F.2(16)/67-V-514 to 517* dated 21.03.1968 and *Notification No. F.2(16)/67-V-1109* dated 19.05.1970, under which the State Government had authorized Inspectors of the Anti-Corruption Branch to investigate offences under the Prevention of Corruption Act 1947, were issued prior to the coming into force of the PC Act, 1988. It is also a matter of record that though the alleged incident pertains to the period 1991–1992 and the charges were framed in 1995, the State Government had authorized Inspectors to investigate such offences, in the year 1999 *vide Notification No. F.1(10)/09-DOV/1555-1561* dated 15.03.1999.

35. The legal position laid down by the Apex Court in ***H.N. Rishbud*** (supra), squarely covers the issue at hand. In that case, the initial investigation was largely conducted by police officers below the rank of Deputy Superintendent of Police without first obtaining the mandatory order from a Magistrate and thus, the Supreme Court was called upon to examine the effect of an investigation conducted in breach of such statutory provisions. It was settled that s. 5(4) and proviso to s. 3 of the P C Act, 1947 and the corresponding s. 5-A of the P C Act, 1952 are mandatory and not directory and that an investigation conducted in violation thereof is illegal. However, if cognizance is in fact taken on a police report in breach of a mandatory provision relating to investigation, the results which follow cannot be set aside unless the illegality in the investigation can be shown to have



resulted in miscarriage of justice. An illegality committed in the course of an investigation does not affect the competence and the jurisdiction of the court, for trial, where cognizance of the case has in fact been taken and the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby. This view was reaffirmed in by the Apex Court in ***Prakash P. Hinduja*** (Supra).

36. Relying on the above judgments, a similar view echoed in ***Fertico*** (Supra), and the Apex Court held as under: -

“22.The Court in *H.N. Rishbud v. State of Delhi* [*H.N. Rishbud v. State of Delhi*, (1955) 1 SCR 1150 : AIR 1955 SC 196 : 1955 Cri LJ 526] , observed as under : (AIR p. 204, para 9)

“9. ... If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that **the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in Parbhu v. King Emperor** [*Parbhu v. King Emperor*, 1944 SCC OnLine PC 1 : (1943-44) 71 IA 75 : AIR 1944 PC 73] and *Lumbhardar Zutshi v. R.* [*Lumbhardar Zutshi v. R.*, 1949 SCC OnLine PC 64 : (1949-50) 77 IA 62 : AIR 1950 PC 26]

These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the



cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.”

It could thus be seen that this Court has held that the cognizance and the trial cannot be set aside unless the illegality in the investigation can be shown to have brought about miscarriage of justice. It has been held that the illegality may have a bearing on the question of prejudice or miscarriage of justice but the invalidity of the investigation has no relation to the competence of the court.

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24. This Court in Union of India v. Prakash P. Hinduja [Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195 : 2003 SCC (Cri) 1314] , while relying on the judgment of this Court in H.N. Rishbud [H.N. Rishbud v. State of Delhi, (1955) 1 SCR 1150 : AIR 1955 SC 196 : 1955 Cri LJ 526] , has observed thus : (Prakash P. Hinduja case [Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195 : 2003 SCC (Cri) 1314] , SCC p. 210, para 21)

“21. ... The Court after referring to Parbhu v. King Emperor [Parbhu v. King Emperor, 1944 SCC OnLine PC 1 : (1943-44) 71 IA 75 : AIR 1944 PC 73] and Lumbhardar Zutshi v. R. [Lumbhardar Zutshi v. R., 1949 SCC OnLine PC 64 : (1949-50) 77 IA 62 : AIR 1950 PC 26] held that if cognizance is in fact taken on a police report initiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial, which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice and that an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial. This being the legal position, even assuming for the sake of argument that CBI committed an error or irregularity in submitting the charge-sheet without the



approval of CVC, the cognizance taken by the learned Special Judge on the basis of such a charge-sheet could not be set aside nor could further proceedings in pursuance thereof be quashed.”

25. It could thus be seen that this Court held that even for the sake of argument that CBI had committed an error or irregularity in submitting the charge-sheet without the approval of CVC, the cognizance taken by the learned Special Judge on the basis of such a charge-sheet, would not be set aside nor could further proceedings in pursuance thereof be quashed.”

(emphasis supplied)

37. Applying the above settled principles to the present case, though the charges were framed in 1995, it has not been disputed that the cognizance was taken by a court of competent jurisdiction on the police report filed in breach of the provisions relating to investigations and in the year 1999 the State Government had authorized the officers of the rank of Inspectors to investigate the offences under the PC Act. Thus, neither the trial would stand vitiated nor the conviction can be set aside solely on this ground of procedural irregularity, as nothing has been placed on record by the appellants that the non-compliance of Section 17 has resulted in miscarriage of justice.

38. Now, before examining the facts of the matter, it would be apposite to understand the underlying framework of the essential provisions of the PC Act.

39. Section 7 of the PC Act reads as under: -

“7. Offence relating to public servant being bribed—Any public servant who,—

(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by



himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, ‘S’ asks a person, ‘P’ to give him an amount of five thousand rupees to process his routine ration card application on time. ‘S’ is guilty of an offence under this section.

Explanation 2.—For the purpose of this section,—

(i) the expressions “obtains” or “accepts” or “attempts to obtain” shall cover cases where a person being a public servant, obtains or “accepts” or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.”

40. Section 13 of the PC Act reads as under: -

“13. Criminal misconduct by a public servant.—

1 (1) A public servant is said to commit the offence of criminal misconduct,—

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.



Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2.—The expression “known sources of income” means income received from any lawful sources.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than 2 [four years] but which may extend to 3 [ten years] and shall also be liable to fine.”

41. A bare perusal of the above sections demonstrates that to sustain a conviction under Sections 7 or 13 of the PC Act, it is mandatory to prove that the public servant had made a prior demand for illegal gratification. Mere acceptance of money is not enough on its own and the proof of such demand is an essential prerequisite for establishing guilt under Sections 7 and 13(1)(d)(i) and (ii).

42. While delving into the above aspect, the Supreme Court in ***B. Jayaraj v. State of Andhra Pradesh, (2014) 13 SCC 55*** has clearly affirmed this principle by observing that: -

“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.”

43. The Constitution Bench later affirmed the aforesaid decision in the recent decision of ***Neeraj Dutta v. State (Government of NCT of Delhi)*** and held that:-

“88. What emerges from the aforesaid discussion is



summarized 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.”

44. It is also well-settled that the Court may draw a presumption of fact only after the prosecution proves the foundational facts. The statutory presumption under Section 20 of the PC Act does not arise in



a vacuum and it comes into play only when the prosecution first establishes the critical links of demand and voluntary acceptance of illegal gratification. Unless the factum of demand is independently proved, no presumption can be invoked. Even otherwise, it must be borne in mind, the presumption of Section 20 is not of the guilt of the accused.

45. Similar view has been taken in *Dhyaneshwar Laxman Rao Wankhede* (Supra), *Madan Mohan Lal Verma* (Supra), *Rajesh Gupta* (Supra) and *C.B. Nagaraj* (Supra).

46. Keeping the above settled principles of law in mind, we may now examine the case at hand.

47. In the present case, a thorough examination of the material on record indicates that the case of the prosecution is fraught with blemishes and fails to establish the case against the appellants beyond reasonable doubt. Further, a perusal of the impugned judgment reveals that several crucial aspects having direct bearing on the adjudication of the case were either insufficiently addressed.

48. The case of the prosecution, against the accused persons, is summarized as under: -

- a. ***Demand of Illegal Gratification (08.04.1991 – Section 7 PC Act)*** –A.K. Gupta and H.S. Verma, being public servants, allegedly demanded ₹2,500 from complainant as illegal gratification for illegal favour of getting Forms B & D completed, and not demolishing the house constructed on Plot No. B/III/372, Sector-6, Rohini.



b. ***Demand and Acceptance of Bribe (11.04.1991 – Section 7 PC Act)*** - H.S. Verma allegedly *again demanded* and *accepted* ₹2,500 from the complainant at the DDA Office towards the same *illegal favour*

c. ***Criminal Misconduct (08.04.1991 & 11.04.1991 – Section 13(1)(d) r/w 13(2) PC Act)*** - Both accused, being public servants, allegedly abused their official position to *obtain pecuniary advantage* of ₹2,500 from the complainant.

49. Evidently, the entire case of the prosecution is predicated on the allegation that the appellants had “*demand*ed” illegal gratification in relation to *illegal favour* of issuance of Forms ‘B’ and ‘D’ concerning the construction of property bearing No. B-3/372, Sector-6, Rohini.

50. With respect to this alleged “*demand*”, PW1/ Som Nath has deposed that the construction of the property had been completed and the property purportedly stood in the name of his wife, Smt. Nanki Devi, though the original allottee was one Ganga Dhar.

51. Thus, in order to establish the allegations against the Appellants the first and foremost aspect to be established beyond reasonable doubt was the title/interest of the complainant over the subject property, in regard to which the demand was made by the Appellants.

52. PW-1’s own cross-examination reveals that he could not establish the ownership of the property in the name of his wife. No title document, sale deed, or transfer record was placed on record to show that the complainant’s wife had ever purchased the said plot. He admitted that the property “*changed hands three or four times*”, yet



could not recall the names of any prior transferees. The prosecution has produced no documentary evidence to connect the complainant or his wife with the property.

53. Significantly, PW-1 admitted that the property had never been assessed for house tax, thereby casting serious doubt on the very existence of a property in the complainant's name or possession. Thus, at the threshold, the prosecution failed to establish the foundational fact that the complainant was genuinely in need of Forms 'B' and 'D', or that any official favour was pending before the appellants and thus, the very basis of the alleged "*demand*" collapses.

54. Despite the prosecution's allegation that the demand for illegal gratification arose out of the accused threatening demolition of the construction, not a single witness has proved the existence of any such construction.

55. There are also the complainant's own contradictory statements regarding the filing of the Forms. He has admitted that he did not know the whereabouts of Ganga Dhar, yet claimed to have applied for Form 'D' in Ganga Dhar's name and further stated that a blank but signed Form 'D' was handed over to him at the time of purchase. He retracts this assertion by denying that any such form was signed by Ganga Dhar and stated that the Form was actually filled by Har Swarup Verma. The forms were admittedly not filed in the complainant's or his wife's name, and the prosecution made no effort to examine Ganga Dhar, the original allottee, or the wife-Nanki Devi, whose testimonies were crucial to establish the very basis of the



alleged demands of the illegal gratification. Further, these inconsistencies, regarding the signed blank forms, strongly suggest that the forms were either forged or unauthorized, thereby rendering the prosecution story unreliable.

56. A further circumstance casting serious doubt on the credibility of the prosecution is the admitted past history of PW-1 who emerges from the record as a “*stock witness*” of the Anti-Corruption Branch. It finds mention in the impugned judgment that the defense had produced the certified judgment dated 25.12.1987 (in Case No. 21/85 arising from FIR No. 13/86), wherein one Som Nath had lodged a trap case against another public servant, who was ultimately acquitted, and where the Court recorded clear findings that Som Nath was a person of shaky and dubious character. That judgment itself referred to yet another earlier case instituted at his behest in which his character had again been discredited.

57. The learned Special Judge did not consider the above judgments by observing that it is not established that the Som Nath mentioned in the judgment is the same Som Nath (PW-1 in the present case). However, this observation itself is in contradiction with the evidence on record. Evidently, when PW-1 was confronted with the details of his previously filed complaints in cross-examination, the complainant initially evasively stated that he “*did not remember*” lodging multiple complaints against various officials. However, he has subsequently admitted in his cross-examination that he had appeared as a complainant in the very cases put to him by the defense. Hence, this



pattern of repeated involvement in trap cases, coupled with prior judicial findings impeaching his character, shakes the credibility of his testimony.

58. Further, PW1/Som Nath alleges that on 05.04.1991, co-accused-A.K. Gupta inspected the site and questioned him for raising construction prior to obtaining Form 'B' and thereby allegedly threatening demolition of the construction. The complainant claimed that A.K. Gupta told him to visit his office so that they can get his 'B' form filled. Subsequently, on 08.04.1991, when the complainant visited A.K. Gupta's office, the alleged "*demand*" of Rs. 2,500/- was raised by A.K. Gupta and H.S. Verma.

59. Pertinently, it stands admitted in the cross-examination of the complainant that he had neither informed any other person about this alleged interaction with A.K. Gupta on 05.04.1991 nor was there any other person present with him on 08.04.1991, to corroborate his version of the events of that day. It is also surprising that no complaint was filed by the complainant on the alleged date of demand, which is 08.04.1991 and the information only reached the Anti-Corruption branch after 3 days i.e. on 11.04.1991. Hence, there is nothing on record to prove and substantiate that any demand of illegal gratification was raised by the accused persons on 08.04.1991.

60. It is further evident from the record that on 11.04.1991, A.K. Gupta was not even present at the spot where the raid was conducted. Even otherwise, there is nothing to show that A.K. Gupta has attempted to obtain the pecuniary advantage of Rs. 2,500/- by abusing



his official position. Hence, his involvement in demand and acceptance of the alleged bribe amount in any case has not been established.

61. From the testimony of PW-1 and PW-3/Vinay Kumar Jain, the *panch* witness, it further becomes apparent that the prosecution has failed to establish the foundational requirement of *demand*.

62. PW-1 had specifically stated that on 11.04.1991, when he met H.S. Verma, outside his Office No. 128, he himself had informed the accused that he had brought Rs. 2,500/- and that the accused should get his B-Form from Mr. Garg and D-Form from Mr. Gupta. Then H.S. Verma, extended his right hand and verbally made the alleged “*demand*” by stating the words “*Pachis sau rupaye do kaam ho jayega*”(translation: -Handover Rs. 2500/- and the work will be done).

63. However, the only independent witness to this conversation, i.e. PW-3, materially diluted this assertion. Though initially he deposed that the accused H.S. Verma had made the demand and extended his right hand to receive the amount, however, in his cross-examination he merely admitted that the accused *had extended his right hand to accept the money*, and states that he doesn’t remember if at that time the accused H.S. Verma had verbally demanded Rs. 2,500/- and assured the complainant that his work would be done.

64. Another aspect which merits consideration is the official role of the accused persons in relation to Forms B and D. The evidence on record does not clearly establish that either of the accused was vested



with the authority or responsibility for issuance or processing of these Forms. Even the Investigating Officer, PW9/ Insp. Tola Ram Mirwani has admitted in his cross-examination that for issuing Form D, a DPC and re-demarcation certificate is required by the complainant, these certificates were not obtained by him. This implies that the complainant was not eligible to receive Form D at the relevant time. Therefore, the very basis of the alleged “*favour*” and demand becomes doubtful because Form D could not have been issued without these mandatory documents.

65. When the prosecution has failed to demonstrate that the accused were even in a position to extend any official favor connected with the complainant’s request, the very premise of the alleged demand becomes doubtful. In the present case, considering that the major aspect of ownership of the property in question has not been established, the absence of any nexus between the accused and the alleged *illegal favour* also becomes a relevant circumstance in assessing the credibility of the complainant’s version. This unexplained disconnect further weakens the prosecution case and casts a reasonable doubt on the allegation of demand.

66. In the absence of clear, consistent, and corroborated evidence, the essential ingredient of prior demand, which is the *sine qua non* for conviction under Sections 7 and 13 of the PC Act, remains unproved qua both the accused persons.

Conclusion: -

67. The solemn duty of a criminal court is not to convict merely



because an allegation is made, but to convict only when the allegation is proven beyond reasonable doubt.

68. It is equally well settled that when two views are possible— one pointing to the guilt of the accused and the other towards his innocence — the view favorable to the accused must be adopted.

69. This principle is not a technical rule; it is rooted in the foundational notion that no person shall be deprived of liberty except through proof that satisfies the judicial conscience.

70. In the light of the foregoing, this Court is of the view that the conviction as recorded by the learned Special Judge is unsustainable. The entire chain of demand, acceptance, and recovery has not been established through credible, consistent, and uncontradicted evidence. The evidence led by the prosecution does not meet the standard of proof required in a case of this nature and thus, the benefit of doubt must and does go to the appellants.

71. Accordingly, the impugned judgment of conviction and impugned order on sentence are set aside. The appellants are acquitted of all charges.

72. The appeals are allowed and disposed of in the aforesaid terms. Pending application(s), if any, also stands disposed of.

73. A copy of this judgment be placed in both the matters.

AMIT MAHAJAN, J

NOVEMBER 24, 2025

“SK”