



2025:DHC:10502



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

%

Date of Decision: 21.11.2025

+

CRL.A. 977/2002

DEVENDER SINGH

.....Appellant

Through: Mr. Shridhar Y. Chitale, Senior Advocate with Ms. Manjeet Kirpal, Ms. Sanyukta Suryavanshi, Mr. D. Aswathavan, Ms. Beleena Biju and Mr. A. Tharva and Mr. Rajesh Pathak, Advocates.

versus

STATE

.....Respondent

Through: Mr Pradeep Gahalot, APP for State with SI Naresh Kumar PS Anti Corruption Branch, Delhi

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present appeal filed under Section 374 Cr.PC r/w Section 27 Prevention of Corruption Act, 1988 ("PC Act"), the appellant seeks to assail the judgment of conviction dated 21.11.2002 and the order on sentence dated 25.11.2002 passed by learned Special Judge, Delhi in CC No.10/98 in context of trial held in case arising out of FIR No.37/97 registered at P.S. Anti Corruption Branch, Delhi under Section 120B IPC read with Section 7, 13 (1) (d) r/w Section 13(2) of the Prevention of Corruption Act, 1998.

2. Vide the aforesaid decision, the present appellant alongwith one *A.P. Janagal* were held guilty and were sentenced to undergo RI for a period of 2



2025:DHC:10502



years and to pay fine of Rs.8,000/- each, in default whereof to undergo further RI for a period of 8 months for the offence punishable u/s 7, 13 (1) (d) r/w Section 13(2) of the Prevention of Corruption Act, 1998. The Trial Court also observed that since both the convicts were given separate substantive sentences, no separate sentence was passed for conviction under Section 120B IPC.

The sentence of the appellant was suspended by this Court vide order dated 07.04.2003.

3. The investigation commenced on the complaint lodged by one *Suresh Gupta*, who alleged that he had purchased scrap goods worth Rs.5,60,000/- in an auction conducted by Directorate General of Supplies and Disposals, New Delhi ('DGS&D') at Supply Depot, ASC, Jalandhar Cantt and 25% of the amount was paid by him at Jalandhar itself and 75% of the remaining amount as well as 10% sales tax was to be paid at the Dak Counter along with application for Sale Release Order. In pursuance of the same, on 09.09.1996, the complainant paid the remaining 75% amount and 4% sales tax and submitted an application for sale release order along with CST 'C' Form for exemption of sales tax to the extent of 6%. He states that the Dak Counter forwarded these documents to Assistant Director (Disposal), MS-6 for issuance of the release order. The release order was to be verified by the concerned Deputy Director (Sales Tax), the position held by co-convict- *A.P. Janagal*. In the complaint, he further alleged that *A.P. Janagal* demanded a bribe of Rs.8,000/- for granting approval on the CST 'C' Form. As the complainant did not intend to give any bribe, he approached the ACB Office wherein a complaint came to be registered. On receipt of complaint, a raiding team was formed, which was joined by Mr. *V.K. Tyagi*, a panch



witness. The raid team was led by Inspector *Shivji Tiwari*. As per the case of prosecution, in the raid proceedings, both *A.P. Janagal* as well as the present appellant were arrested. The role ascribed to the present appellant is of counting the bribe amount.

4. During further investigation, sanction was obtained and charges were framed against the appellant under the substantive offence of Sections 7/13(1)(d) r/w section 13(2) of the Act as well as conspiracy under Section 120-B read with the aforesaid sections, to which the appellant pleaded not guilty and claimed trial.

5. In the trial, the prosecution had examined a total of 12 witnesses, the primary being the complainant *Suresh Gupta*, who was examined as PW-3 and the *panch* witness, who was examined as PW-4.

6. Mr. Shridhar Y. Chitale, learned Senior Advocate appearing for the appellant while seeking setting of the impugned judgment contends that the learned Trial Court failed to appreciate the testimony of the complainant who had categorically stated that the appellant had not demanded any bribe amount. Further, at no stage the complainant had alleged that the appellant had any knowledge of the bribe being demanded by his superiors. He further submits that the job profile of the appellant, who at the relevant time was working as an LDC and used to sit at the third floor, was reporting to one Mr. A.S. Purty, Assistant Director (Disposal) in DGS&D, who used to sit at the fourth floor. He further submits that the prosecution had failed to prove charge under Section 120B IPC, thereby breaking the chain of circumstances linking the appellant.

7. The aforesaid contentions were refuted by learned APP for the State, who submits that the testimony of complainant is clear and cogent as he had



stated that the demand of bribe was made by *A.P. Janagal*, which stands proved and established. The appellant was found present in the room at the time of handing over of the bribe and it was the appellant who had counted the bribe money which was recovered from him and that his hand-wash turned pink.

8. Before proceeding further, this Court notes that the appeal filed by the co-convict- *A.P. Janagal* being Crl.Appeal No.960/2002 was disposed of on 28.02.2024, as he has expired on 15.08.2009.

9. 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 Pradesh¹, where the Supreme Court has categorically observed 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.”

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*

¹ B. Jayaraj v. State of Andhra Pradesh reported as (2014) 13 SCC 55



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.”

10. 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.*

11. A perusal of testimony of complainant *Suresh Gupta*, who was examined as PW-3, would show that he had first approached the office of the accused persons on 09.09.1996, when concededly, he met with *A.P. Janagal*, who made the initial demand. The complainant had approached the office of DCP, ACB where the pre-raid proceedings were carried out. As per the testimony of the complainant as well as other prosecution witnesses, the raid team reached the office of the accused persons on 10.09.1996 at about 12:30 PM. The complainant deposed that he went to the fourth floor to meet *A.P. Janagal* and at that time, he was accompanied by panch witness *V.K. Tyagi*. Though, *A.P. Janagal* had inquired about the person accompanying the complainant, to which the complainant replied that he had accompanied the complainant from Jalandhar. On this, *A.P. Janagal* asked the panch witness to call *Devender Singh* from the third floor. In the meantime, while the panch witness had gone away, *A.P. Janagal* had demanded the bribe of Rs.8,000/-, to which the complainant asked him to reduce it to Rs.5,000/-, which he denied. After this conversation took place, the *panch* witness came along with the appellant at the fourth floor and both entered the room of *Janagal*. When the complainant tried to handover the bribe amount to *A.P. Janagal*, the latter asked him to give the same to the appellant. *A.P. Janagal* also asked the appellant to count the money. At this stage, the panch witness



stepped out and gave a signal to the raiding party.

In cross-examination, the complainant was asked if the appellant had any knowledge of the bribe amount of Rs.8,000/-, to which the complainant admitted that the appellant being an LDC, he was not concerned with the sales tax or the sale release order. He also admitted that the appellant had not demanded any bribe for himself or for any other person. He further stated that the appellant was only asked by *A.P. Janagal* to count the currency notes. A suggestion was given to him as to whether the appellant knew that the money handed over to him was bribe amount, to which the complainant answered that he had no knowledge.

12. The *panch* witness-V.K. Tyagi was examined as PW-4. In his testimony, he deposed about the complainant approaching the ACB office and the pre-raid proceedings. On the aspect of the proceedings that took place at the office of *A.P. Janagal*, he stated that while he along with the complainant had gone to the office of *A.P. Janagal* at fourth floor, *A.P. Janagal* had inquired about him, to which the complainant stated that he was his cousin who had come from Jalandhar. When *A.P. Janagal* asked the witness to go downstairs and asked the clerk to come with the file. He went down and brought the appellant along with him. *A.P. Janagal* asked the appellant in Punjabi, to count the money as he had no faith in him. On this, the *panch* witness came out and gave a pre-determined signal to the raiding party.

13. Thus, the complainant has categorically admitted that the appellant did not demand any money from him, either for himself or on someone else's behalf. Even the *panch* witness has not stated as to any demand by the appellant. Concededly, there is nothing on record to show that the appellant



had any knowledge of the demand made by *Janagal* or that any demand was made in his presence. Thus, the foundational factum of demand has not been established in so far as appellant is concerned and in absence thereof, mere recovery of money would not be sufficient to secure a conviction under 7, 13 (1) (d) r/w Section 13(2) of the Prevention of Corruption Act, 1998. He is held to be acquitted of the same.

14. The appellant has also been charged and convicted with the aid of Section 120-B IPC. The same requires common intention or an agreement to commit an unlawful act. Since conspiracy is inherently covert, Its existence can be inferred from the surrounding facts and circumstances, including the conduct of the accused. There should be concert of purpose and unity of design and a prior agreement, express or implied, to commit an unlawful act, or a lawful act by unlawful means. Reference in this regard may be made to the recent decision of Supreme Court in Gurdeep Singh v. State of Punjab,² wherein it was held that:-

17. As regards the second limb of the appellant's contention, it is well established that the offence of criminal conspiracy under section 120B IPC, by its very nature, is seldom capable of being proved by direct evidence. Being a clandestine agreement between two or more persons to commit an unlawful act, or a lawful act by unlawful means, conspiracy is typically established through circumstantial evidence, patterns of conduct, and the cumulative interferences drawn from the interactions of the accused persons.

xxx

17.3. In Sudhir Shantilal Mehta v. CBI⁸, the Court again affirmed that due to the covert nature of conspiracies, courts must necessarily look to the overall circumstances, the acts of the accused, and the coherence of their conduct to infer a conspiracy. The presence of a common intention and the coordinated acts of multiple persons can give rise to a legitimate inference of an unlawful agreement. The relevant paragraphs read as under:

² 2025 SCC OnLine SC 1669



“Criminal conspiracy

113. Criminal conspiracy is an independent offence. It is punishable independent of other offences; its ingredients being:

- (i) an agreement between two or more persons.*
- (ii) the agreement must relate to doing or causing to be done either*
 - (a) an illegal act;*
 - (b) an act which is not illegal in itself but is done by illegal means.*

It is now, however, well settled that a conspiracy ordinarily is hatched in secrecy. The court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. While however doing so, it must bear in mind that meeting of the minds is essential; mere knowledge or discussion would not be. As the question has been dealt with in some detail in Criminal Appeal No. 76 of 2004 (R. Venkatakrishnan v. CBI, [(2009) 11 SCC 737]), it is not necessary for us to dilate thereupon any further.”

....

xxx

13. To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither it is necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implication. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the court to keep in mind the well-known rule governing circumstantial evidence viz. each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. The criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is sine



qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement.”

(See also P.K. Narayanan v. State of Kerala, [(1995) 1 SCC 142 : 1995 SCC (Cri) 215].)”

Thus, it is crystal clear that the offence of criminal conspiracy need not be proved by direct evidence, nor is it necessary that all conspirators participate in every stage of the commission of the offence. What is material is the existence of a prior agreement - express or implied - to commit an unlawful act, or a lawful act by unlawful means. Once such agreement is established, even by way of inference from circumstantial evidence, the legal consequences under Section 120B IPC follow.

15. Although the learned Trial Court came to the conclusion that the appellant had the knowledge, however reading of the aforesaid two testimonies would show otherwise. The *panch* witness at no stage had claimed that any demand was made in presence of the appellant. Thus, the appellant cannot be saddled with the knowledge that the amount handed over to him for counting only at the asking of *A.P. Janagal* was, in fact the bribe amount. Though at the time of raid, a cassette recorded was also handed over to the complainant to record the conversation, however, as per the conceded case of prosecution, the cassette was never produced. Thus, the prosecution has miserably failed to prove the prior agreement or meeting of mind between the appellant and the co-accused to drive home the charge of conspiracy. Having come to the conclusion that the prosecution had failed to connect the appellant with the knowledge, as a necessary sequitur, the appellant is acquitted of the said charge as well.



2025:DHC:10502



16. In view of the foregoing discussion, the appeal succeeds. The impugned judgment of conviction and order on sentence are set aside. The appellant is acquitted. His bail bonds are cancelled and sureties discharge.

17. The appeal is disposed of in above terms.

18. A copy of this order be communicated to the concerned Trial Court for information and records.

19. A copy of this order be also communicated to the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 21 2025/rd