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

+ **CRL.L.P. 82/2014**

STATE

.....Petitioner

Through: Mr. Mukesh Kumar, APP for the
State with Insp. Radhey Shyam, AC
Branch.
Mr. Vinay Kumar Sharma, Mr.
Aaditya, Advocates for Complainant

versus

RAJESH KUMAR & ANR

.....Respondents

Through: Mr. Hemant Kumar, Mr. Venkatesh
Joshi, Advocates for R-1
Mr. Nikhil Goel, Senior Advocate
with Ms. D. Durga Devi and Mr. R.
Sudhakaran, Advocates.
Mr. Jugal Wadhwa, Mr. Raghav
Goyal, Mr. Rishabh Wadhwa and Mr.
Rishab Bhalla, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

28.04.2025

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1. Through the present petition, the State seeks leave to appeal under Section 378 (3) of the Code of Criminal Procedure, 1973¹ against judgment dated 07th June, 2013 passed by the Special Judge-07 (Central), PC Act, Central District, Tis Hazari Courts, Delhi in C.C. No. 20/11 titled “***State v. Rajesh Kumar & Anr***”. By the said judgement, the Trial Court has acquitted the Respondents of the charges under Sections 7 and 13(1)(d) of the

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Prevention of Corruption Act, 1988² read with Section 120B of the Indian Penal Code, 1860.³

2. Briefly stated, the facts of the case are as follows:

2.1 The Complainant was operating bread manufacturing units and had purchased a Tata Safari vehicle on 13th May, 2000 from A-One Motors, Moti Nagar. The vehicle was financed by AFCO Associate Finance India through a broker named Mr. Kuldeep Bhatia. The Complainant secured a loan of ₹5,70,000, in addition to ₹2,19,140, paid in cash towards the purchase.

2.2 Subsequently, Mr. Kuldeep Bhatia informed the Complainant that the loan had been rejected and demanded that the outstanding balance be paid in cash. On 16th May, 2000, Mr. Bhatia collected ₹1,00,000 in cash from the Complainant for this purpose.

2.3 The following day, on 17th May, 2000, Kuldeep Bhatia called the Complainant to Muskan Restaurant, located in Naveen Shahdara. Upon arrival, the Complainant observed several police personnel present at the location, including Respondent No. 1. Respondent No. 1 informed the Complainant that he had fraudulently procured the car loan, which had subsequently been rejected. He took the Complainant to P.S. Bhajanpura and warned him that failure to return the vehicle to Mr. Kuldeep Bhatia would result in his arrest. Faced with this threat, the Complainant returned the Tata Safari to Mr. Bhatia on 19th May, 2000. In exchange, Mr. Bhatia handed over a bank draft for ₹2,19,140 to the Complainant.

2.4 On 20th May 2000, at around 12:00 p.m., Respondent No. 1 contacted

² “PC Act”

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the Complainant *via* mobile phone, and asked him to meet him at his office, P.S. Bhajanpura. The Complainant met him on 22nd May 2000, around 12:00 noon. During the meeting, Respondent No. 1 demanded ₹1,00,000/-, threatening to implicate the Complainant in case the amount was not paid. On 23rd May 2000, Respondent No. 1 called the Complainant again, reiterating the demand for the full amount. When the Complainant expressed his inability to pay the full amount, Respondent No. 1 agreed to initially accept a sum of ₹25,000, with the assurance that the balance could be paid later. Left with little choice, the Complainant, under duress, reluctantly agreed to meet this reduced demand.

2.5 Thereafter, on 24th May, 2000, at around 10:00 a.m., Respondent No. 1 called the Complainant and asked him to meet Baby Khan (Respondent No. 2). Later that day, around 11:00 a.m., Respondent No. 2 contacted the Complainant and asked him to come to Mrignayani Restaurant at Dilshad Garden at 3:00 p.m., bringing the bribe amount of ₹25,000/-. She claimed that she would act as a mediator and arrange a meeting with Respondent No. 1.

2.6 Since the Complainant was opposed to paying a bribe, he went to the Anti-Corruption Branch and lodged a formal complaint with the Raid Officer in the presence of Panch witness Arun Satija (PW-8). The complaint alleged that Mr. Rajesh Kumar (Respondent No. 1), then posted as Inspector, District Crime Cell, North East District, Delhi, had demanded a bribe of ₹1,00,000, later reduced to ₹25,000, to refrain from falsely implicating the Complainant in a criminal case.

2.7 The Complainant produced over 50 GC notes of ₹500 each before the Raid Officer, who recorded the serial numbers of the notes in the pre-raid

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proceedings (Ex. PW1/F) and treated them with phenolphthalein powder. The Raid Officer then demonstrated the procedure to the Panch witness and the Complainant by having the Panch witness's right hand touch the treated currency notes. The Panch witness's right hand was subsequently washed in a colourless solution of sodium carbonate, which turned pink, confirming the presence of the phenolphthalein powder. The treated currency notes were then given to the Complainant, and the Panch witness was instructed to stay close to the Complainant, overhear any conversation between the Complainant and the person demanding the bribe, and signal by raising his hand after being satisfied that the bribe had been paid.

2.8 At around 1:30 p.m., the Raid Officer, accompanied by the Complainant, Panch witness, Inspector R.S. Yadav, and other members of the raiding team, left the Anti-Corruption Branch in a government vehicle and arrived near Mrignayani Restaurant, Dilshad Garden, at approximately 2:00 p.m. Inspector R.S. Yadav and the driver remained in the vehicle, which was parked at a distance, while the Complainant and the Panch witness went to the restaurant. At around 4:00 p.m., the Complainant and the Panch witness left the restaurant and were seen talking to Respondent No. 2, who had arrived in a Maruti Zen car. Shortly thereafter, the Complainant and Panch witness approached the Raid Officer and informed him that they had been called to P.S. Bhajanpura. The raiding team then followed them to the police station, where the government vehicle was parked outside. The Complainant and Panch witness entered the police station, while the members of the raiding team took suitable positions nearby.

2.9 At approximately 5:45 p.m., upon receiving the pre-determined signal, the raiding team proceeded to the designated location, the DIU

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Office, where a Maruti Zen car was parked. Inside the car were Respondent No. 2 and the Complainant, while the Panch witness stood outside. The Panch witness informed the Raid Officer that Respondent No. 2 had demanded and accepted a bribe of ₹25,000 from the Complainant, acting on the instructions of Respondent No. 1.

2.10 The Raid Officer then revealed his identity and confronted Respondent No. 2, accusing her of accepting the bribe on instructions from Respondent No. 1. He offered him the opportunity to be searched, but he declined. Following his directions, the Panch witness recovered the bribe amount of ₹25,000/- from Respondent No. 2. The serial numbers on the recovered currency notes were matched against those recorded in the pre-raid proceedings (Ex. PW1/F) and were found to be identical. The recovered notes were seized and documented under seizure memo (Ex. PW1/B). Thereafter, hand wash tests were conducted on both hands of Respondent No. 2 using a colourless solution of sodium carbonate, which turned pink. The solution was collected into two clean glass bottles, sealed with the MS seal, and labelled RHW-I and II and LHW-I and II, with identification slips signed by the Raid Officer, the Complainant, and the Panch witness. These bottles, along with the sample seals, were seized under memo Ex. PW1/C. Both the Respondents were also taken into custody. The Raid Officer prepared the post-raid proceedings (Ex. PW1/G), drafted the *rukka* (Ex. PW9/B), and sent it through Constable Om Prakash to P.S. Anti-Corruption Branch for registration of the case.

2.11 The Raid Officer called the Investigating Officer, Inspector R.S. Yadav (PW 21) to the spot and handed over custody of both Respondents, along with the case property and relevant documents, for the purpose of

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investigation. The IO took over the investigation, prepared the site plan (Ex. PW21/A), and conducted the interrogation and arrest of both Respondents. He also carried out their personal search and recorded the statements of the Complainant, the Panch witness, and other relevant witnesses. During the investigation, the IO obtained the call details of the mobile phones used by Respondent No. 2 and the Complainant. He further collected the Rojnamacha entries of the DC Cell, North District, covering the period from 1st May, 2000 to 1st July, 2000. Additionally, the IO procured the bio-data of Respondent No. 1 (Ex. PW12/A) and secured the Sanction Order for prosecution against him (Ex. PW2/A). Upon completion of the investigation and recording of statements of all material witnesses, the IO prepared the chargesheet and submitted it before the concerned court.

3. Charges were framed against the Respondents on 01st October, 2023. The Respondents pleaded not guilty and claimed trial. In order to prove their case, the Prosecution examined 21 witnesses.

4. After closure of prosecution evidence, the Respondents recorded their statements under Section 313 Cr.P.C., wherein they denied having made any demand for or accepted any bribe from the Complainant. They contended that they had been falsely implicated and had no involvement in the alleged offence. In support of their defence, the Respondents examined the following witnesses: SI Brahm Singh as DIW1; Rajinder Kumar, Conductor in DTC as DIW2; HC Ranjit Singh from PS Bhajan Pura as D1W3; ASI Desh Raj as D1W4; Harkesh Singh, Nodal Officer, Bharti Airtel as D1W5; and HC Ram Avtar as D2W1.

5. After consideration of the evidence adduced by the parties, the Trial Court acquitted both the Respondents for all the offences alleged against

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them.

6. The State, aggrieved by the impugned has preferred the present petition seeking leave to appeal. In support of the petition, Mr. Mukesh Kumar, APP for the State, advances the following grounds:

6.1 The Prosecution had successfully established the charges against the Respondents through consistent and corroborated evidence. The Trial Court, however, failed to appreciate the cumulative effect of the evidence on record, resulting in a miscarriage of justice.

6.2 The finding of the Trial Court that the sanction order (Ex. PW2/A) suffered from legal infirmities is untenable. PW-2, the competent authority, had duly accorded sanction after due application of mind and appeared during trial to confirm the same. The Trial Court erred in concluding that the sanction had been granted mechanically.

6.3 The Complainant (PW-1) and the Panch witness (PW-8) unequivocally supported the case of the Prosecution. Both witnesses deposed in clear terms regarding the demand and acceptance of the bribe amount, and their testimony remained unshaken during cross-examination.

6.4 The recovery of ₹25,000 from Respondent No. 2 immediately after the transaction, matched with the pre-recorded serial numbers, constituting strong corroborative evidence supporting the Prosecution's case.

6.5 The recovery witnesses as well as the Investigating Officer deposed consistently against the Respondents. None of these witnesses bore any animosity or prior enmity towards the Respondents, thereby lending further credibility to their testimony. The settled legal position, as laid down by the Supreme Court in *State of UP vs. Zakaullah*,⁴ emphasises that absence of

⁴1998(1) SCC 557.

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motive for false implication strengthens the case of Prosecution.

6.6 The minor contradictions or inconsistencies in the depositions are natural and insignificant, arising from normal errors of memory due to the passage of time. Such minor discrepancies do not detract from the overall reliability of the case of Prosecution.

7. The Court has duly considered the aforementioned contentions. The issue under consideration before this Court is whether this is a fit case for grant of leave to appeal to the State. The legal principles governing such a determination are now firmly entrenched in our jurisprudence. It is well settled that the High Court, while considering a leave to appeal under Section 378(3) Cr.P.C., must be satisfied that the findings of the Trial Court suffer from a manifest error, are perverse in nature, or reflect a glaring misappreciation of law or evidence. It is not sufficient that the appellate court may have arrived at a different conclusion on the same facts; the mere possibility of an alternative view cannot be the basis for interference with an acquittal. Rather, the Court must be persuaded that the Trial Court has either ignored material evidence, adopted a patently unreasonable view, or drawn conclusions which no court could have arrived at. These principles have been clearly articulated by the Supreme Court in several cases and have been summarized in ***Prem Kanwar v. State of Rajasthan***,⁵ wherein the Court observed as follows:

“16. The principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial Court have been set out in innumerable cases of this Court and in Ajit Savant Majagavi v. State of Karnataka (AIR 1997 SC 3255) the following principles have been re-iterated:

1. In an appeal against an order of acquittal, the High Court possesses all the powers and nothing less than the powers it possesses while hearing an

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appeal against an order of conviction.

2. The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by trial Court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

3. Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

4. In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

5. If the High Court on a fresh scrutiny and re-appraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

6. The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanor of witnesses and observing their conduct in the Court especially in the witness box.

7. The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.

In this respect, the decisions of this Court in Balbir Singh Vs. State of Punjab (AIR 1957 SC 216) Ram Kumar Vs. State of Haryana (AIR 1995 SC 280), Bharwad Jakshibhai Nagjibhai Vs. State of Gujarat (AIR 1995 SC 2505), Hari Chand Vs. State of Delhi (AIR 1996 SC 1477), Raghbir Singh Vs. State of Haryana (JT 2000 (5) SC 21), and Hari Ram Vs. State of Rajasthan (JT 2000 (6) SC 254) may be seen.

17. In Ashok Kumar Vs. State of Rajasthan (AIR 1990 SC 2134) this Court has held as under: "While caution is the watchword, in appeal against acquittal as the trial Judge has occasion to watch demeanour of witnesses interference should not be made merely because a different conclusion could have been arrived at. Prudence demands restraint on mere probability or possibility but in perversity or misreading interference is imperative otherwise existence of power shall be rendered meaningless. In the present case the order of the trial Court is vitiated as part from deciding the case on irrelevant consideration the most serious error of which he was guilty and which rendered the order infirm which could be set aside by the High Court was that he misread the evidence and indulged in conjectural inferences and surmises."

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8. The same principle was echoed in *Ashok Kumar v. State of Rajasthan*,⁶ where the Supreme Court held that prudence must guide appellate interference. It is not the possibility of another conclusion, but the unreasonableness or illegality of the conclusion reached by the trial court that justifies appellate scrutiny. Where the trial court has proceeded on conjecture, surmise, or patent misreading of material evidence, the High Court is not merely entitled, but duty-bound, to correct the miscarriage of justice.

9. Upon a careful analysis of the impugned judgment in light of the legal principles discussed above, this Court finds that the acquittal of the Respondents is based on a detailed and reasoned evaluation of the evidence led by the Prosecution. *Firstly*, the Trial Court observed that the sanction granted under Section 19 of the PC Act against Respondent No. 1 was accorded in a mechanical manner. The relevant observations of the Trial Court, as recorded in Paragraph Nos. 14 to 22 of the impugned order, are extracted below:

“14. The first and foremost question having significant bearing on the fate of this case is whether prosecution has proved that valid Sanction has been accorded by the Competent Authority as per Section 19 (1) of Prevention of Corruption Act, 1988 as against the accused Rajesh Kumar. With regard to this aspect, during course of argument, it is submitted by Ld. Counsel for accused Rajesh Kumar that PW2 has passed the Sanction Order Ex.PW2/A mechanically without appreciation of the relevant material and said Sanction Order does not even disclose the detailed materials on the basis of which said Sanction Order has been passed and therefore, said Sanction Order Ex.PW2/A is legally Invalid and accused Rajesh Kumar deserves to be acquitted on this count itself. In order to prove the Sanction as against the accused Rajesh Kumar, the prosecution has examined PW2 Sh.Suresh Roy, the then Joint Commissioner of Police, New Delhi who has deposed that on 3.5.2001 he was posted as Joint Commissioner of Police, New Delhi and a request was received from Anti

⁶(1991) 1 SCC 166.

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Corruption Branch to grant Sanction for prosecution against the accused Rajesh Kumar along with copy of Chargesheet, statement of witnesses and other relevant documents relating to this case and after perusal of the same, he accorded the Sanction on 3.5.2001 which is Ex.PW2/A which bears his signatures at point P. In the cross examination by Ld. Counsel for the accused Rajesh Kumar, he added that he might have received said request about 7 days before he accorded the Sanction. He also added that he did not peruse any other file except the material received from Anti Corruption Branch. Said PW2 in the cross examination by Ld. Counsel for the accused Rajesh Kumar has further deposed as under:-

“It is correct that I did not mention in the sanction order that there was an initial demand of bribe Rs.1,00,000/- and that there were negotiations and I did not mention these facts in the sanction order. It is incorrect to suggest that I did not record these immediately preceding facts because I did not apply my mind and that documents were not placed before me and that I had not gone through any document of this case. It is correct that I did not mention as to on which date there was a demand of bribe and on which date there was acceptance.”

15. The deposition of said PW2/Suresh Roy that he has gone through the copy of the Chargesheet relating to this case as placed before him prior to according Sanction Ex.PW2/A on dated 3.5.2001 is found falsified in view of the fact that from the perusal of the case file, it is clearly reflected that the said Chargesheet has been prepared by Inspector R.S.Yadav/IO on dated 18.5.2001 and therefore, copy of said Chargesheet dated 18.5.2001 was certainly not available being not in existence before PW2/Suresh Roy on dated 3.5.2001 when he has accorded the Sanction for prosecution as against the accused Rajesh Kumar vide Sanction Order Ex.PW2/A. Furthermore, said PW2 in his cross examination by Ld. Defence Counsel has clearly admitted that he has not mentioned in the Sanction Order that there was initial demand of bribe of Rs. 1 Lac and then there was negotiations, the date on which demand of bribe was made and date on which there was acceptance. Said vital facts relating to the demand of bribe are not found mentioned in said Sanction Order Ex.PW2/A reflecting thereby die relevant material in this respect were either not available before the said Sanctioning Authority or the same were not gone through before passing the said Sanction Order.

16. Furthermore, from the perusal of the said Sanction Order EX.PW2/A, it is clearly reflected that said Sanction Order does not disclose about the details of the documents/material on the basis of which said PW2 has accorded the Sanction nor it discloses about the grounds of satisfaction in pursuance of which the Sanctioning Authority has passed his Sanction Order. Said facts are clearly found established from the bare perusal of the relevant part i.e. Para 3 of said Sanction order Ex.PW2/A which reads as under:-

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“Whereas I Suresh Roy, Joint Commissioner of Police, New Delhi Range being the authority competent to remove Sh. Rajesh Kumar, Inspr.No.D-I/661 from service / office after examining carefully the material placed before me in regard to the said act and allegation and circumstances of the case, consider that the said Sh.Rajesh Kumar, Inspr. No. D-I/661, be prosecuted in the court of law for the said offence / offences.”

17. In the case reported as **Mansukhlal Vithaldas Chauhan Vs. State of Gujarat (1997) 7 SCC 622**, it was observed by Hon'ble Supreme Court of India as under:-

“The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all the relevant facts were considered by the sanctioning authority.”

18. Furthermore, in another case reported as 1995 Crl.L.J. 4195 N.M.Rajendran Vs. State, it was observed in Para 20 as under:-

“Though a report of the Director of Vigilance and Anti Corruption with a particular reference number has been referred in the column of reference and in paragraph six, full and careful examination of materials placed before the sanctioning authority was referred to, it is manifest and apparent that it is not known what are all the documents that have been relied upon by the Sanctioning Authority to arrive at the satisfaction and what are all the grounds of satisfaction are totally absent in this case. Above all evidence aliunde involved in this case prostrating the facts leading to the offences before the Sanctioning Authority and his perusal of the same is also absent totally in this case. In short, I would like to add that the sanctioning authority has not applied its mind with reference to the evidence leading to the facts constituting the offence committed by the appellant herein and thereupon, he has accorded the sanction. Thus it is seen that the according of sanction is not an idle formality but a solemn and sacro-sanct act following the consideration of all the materials placed before him not to be guided by extraneous considerations, which alone provides the protection to public servants against frivolous prosecutions and litigations,. This requirement of law is necessarily incumbent upon the investigating agency, to be complied with, before launching prosecution against the person accused of the offence under the Act.”

19. The law relating to the Sanction is strict in its requirements that is to say there has to be a valid Sanction for commencement of the trial. Where the Sanction has been accorded by a person who was not competent to accord the said Sanction, the same has been held not to be valid Sanction or further it matter that a Sanction has been accorded without application

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*of mind, the same has also been held not to be a valid Sanction. Criteria laid down for grant of Sanction has to fall within the four corners of the Sanction and any deviation in this regard would result in initiating the trial without a valid Sanction has been held to be a trial without jurisdiction by the court and it was so held by Hon'ble Supreme Court of India in the case reported as **S.N.Bose Vs. State of Bihar AIR 1968 SC 1292.***

*20. The requirement of the existence of Sanction cannot be given by mere interpretation to the effect that once cognizance is taken the absence of Sanction become irrelevant. "If cognizance itself cannot be taken in the absence of sanction and taking cognizance of an offence by whatever means cannot justify the existence or absence of Sanction. Infact as strictly speaking if there does not exist any valid Sanction, it cannot be said that the cognizance of offence, was taken by itself, cannot cure the defect in this regard, hence the prosecution of the appellant was vitiated". It was so held by Hon'ble Supreme Court of India in the case reported as **K.Narsinihachari Vs. State Inspector of Police ACB Cuddapha District 2003 Crl.L.J. 3315.***

21. Granting of Sanction U/S 19 of the Prevention of corruption Act, 1988 is not a mere formality and it is necessary that all the facts on which prosecution has relied upon, must be before Sanctioning Authority and the burden of proving the same is squarely on the head of the prosecution. If any material facts which go to the root of the matter and investigation are not brought to the knowledge of Sanctioning Authority, it cannot be said that Sanctioning Authority had applied his mind before granting Sanction for prosecution.

22. By taking cue from the aforesaid judgments and keeping in mind the legal requirement relating to the grant of Sanction and applying the same to the present Sanction Order Ex.PW2/A which found not stating the detailed of the materials/documents which have been examined by the Sanctioning Authority before according Sanction and keeping in mind that the Chargehsheet dated 18.5.2001 was certainly not available before the Sanctioning Authority on dated 3.5.2001 when said Sanction Order was passed, I have no hesitation to safely conclude that said Sanction Order Ex.PW2/A suffer from serious legal infirmities and is legally Invalid."

10. The Trial Court noted that the Sanctioning Authority (PW-2), a senior police officer, claimed to have relied on the chargesheet and related materials while granting sanction on 3rd May, 2001. However, it emerged from the record that the chargesheet was in fact prepared only on 18th May, 2001, clearly after the date on which sanction was granted. This fundamental

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inconsistency not only casts a doubt on the version of PW-2, but also undermined the Prosecution's claim that the authority had perused the full set of relevant materials before according sanction. Moreover, the Sanction Order itself fails to disclose any specific material or dates concerning the demand or acceptance of bribe, or the factual matrix constituting the alleged offence, raising serious doubts about the level of scrutiny and satisfaction reached by the sanctioning authority.

11. *Secondly*, the Trial Court undertook a detailed examination of the evidentiary inconsistencies that materially undermined the Prosecution's version of events. The Court observed that the contradictions in the testimonies of key Prosecution witnesses, PW-1 (Complainant), PW-8 (Panch Witness), PW-9 (Raid Officer), and PW-21 (Investigating Officer), were not merely incidental, but struck at the root of the case. The Trial Court highlighted irreconcilable discrepancies concerning the time of the Complainant's arrival at the Anti-Corruption Branch, the timing and venue of the complaint, the departure for and arrival at the trap location, the sequence of events leading to the alleged demand and acceptance of the bribe, the identity of the persons present during critical stages of the raid, and the precise manner in which the tainted money was recovered. The relevant observations in this regard are recorded in Paragraph No. 23 of the impugned judgment, which reads as under:

"23. Besides that from the perusal of the material as available on the record, it is clearly reflected that there are several contradictions on various aspects as found revealed from the deposition of 4 material PWs i.e. PW1/Puran Chugh/complainant, PW8/Arun Satija/ Panch witness, PW9/Inspector M.S.Sangha/Raid Officer and PW21 Inspector R.S.Yadav/IO whereby hitting at the root of the case of the prosecution and some of said contradictions are as given below:-

(1) On the point as regards the time as to when the complainant came to Anti Corruption Branch and when his Complaint Ex.PW1/A was written, at

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one stage PW/complainant deposed in this respect as under:-

"On 24th May, 2000 at about 12:30 p.m. I reached in Anti Corruption Branch....."

In Anti Corruption Branch, my statement Ex.PW/A was recorded in presence of Panch witness Arun Satija."

At another stage, said PW/complainant has deposed in this respect as under:-

"My complaint was recorded at about 1:30 p.m. It was not recorded at 12:00 noon. It had taken about 50 minutes to record my statement."

Whereas PW8/Panch witness by taking contradictory stand has deposed in this respect as under:-

"I reported in Anti Corruption Branch at about 10:30 A.M. complainant P.K.Chugh came in Anti Corruption Branch after one or two hours. I was called in the room of the Raid Officer. The Complaint was recorded in my presence which is Ex.PW/A which bears my signatures at point B."

(2) On the point as regards the time as to when the Raiding team including the complainant left AC Branch for Mrignayani Restaurant and the time as to when they reached Mrignayani Restaurant, PW1/complainant has deposed in this respect as under:-

"When we started from Anti Corruption Branch, the wrist watch of Inspector Sangha was showing 1:30 p.m. whereas my watch was showing 3:00 p.m....."

As per time in my watch we reached at Mrignayani Restaurant at 4:00 p.m."

Whereas PWS/Panch witness has deposed in this respect as under:-

"At about 1:00 p.m. I along with complainant, Raid Officer along with other police officials of Anti Corruption Branch left the Anti Corruption Branch in the government vehicle and reached at Mrignayani Restaurant at about 2:00 p.m.""

Whereas PW9/Raid Officer has deposed in this respect as under:-

"On that day, at about 1:30 p.m., I along with complainant, Panch witness, Inspector R.S.Yadav, SI S.N.Pandey, W/SI Kaushal Pandey, Head Constable Asad Raza, Constable Om Prakash left Anti Corruption Branch for Mrignayani Restaurant, Dilshad Garden in a government vehicle and we reached there at about 2:00 p.m."

(3) On the point as to how complainant, friend of complainant, Panch witness and other raiding team members left Mrignayani for Bhajan Pura, PW/complainant has deposed in this respect as under:-

"Arun Satija/Panch witness and my friend took a seat in car of accused Baby Khan and I followed her car in the vehicle of Raid Party. Thereafter, we reached at PS Bhajan Pura."

Whereas PW8/Panch witness by taking contradictory stand has deposed in this respect as under:-

"Thereafter, I along with the complainant sat in the car of Baby Khan

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and went to PS Bhajan Pura and reached there at about 4:30 p.m. I do not know what happened to the government vehicle,"

Whereas PW9/Raid Officer by taking contradictory stand has deposed in this respect as under:-

"When we left Mrignayani Restaurant, the complainant and Panch witness were with us in the government vehicle. Panch witness and complainant did not go to PS: Bhajan Pura in the car of Baby Khan."

(4) On the point as to whether the Complainant and Panch witness were relieved from the spot or they were brought to the Anti Corruption Branch after raid, PW/complainant has deposed in this respect as under:-

"It is correct that I came straight from the spot to Anti corruption Branch and did not stop anywhere. I left the Anti Corruption Branch at about 3:00 a.m. During this time, it was told to us that some police officials had gone to the house of accused Rajesh and during that time, Insp.M.S.Sangha along with one Sub Inspector were doing the writing work."

Whereas PW21/I0 by taking contradictory stand has deposed in this respect as under:-

"I left PS Bhajan Pura for Anti Corruption Branch at about 10:15 p.m. along with Raiding team and both accused persons. Complainant and Panch witness were freed from the spot. They have not come to Anti Corruption Branch along with me."

Whereas PW8/Panch witness by taking contradictory stand has deposed in this respect as under:-

"I left Anti Corruption Branch around 4:00 a.m. after seeking permission of Investigating Officer Inspector R.S.Yadav. When the proceedings were being conducted in Anti Corruption Branch, I came to know the name of Insp. R.S.Yadav. I was not knowing him by face earlier to then. I remained in the room of Insp.R.S.Yadav after reaching Anti Corruption Branch after raid till I left Anti Corruption Branch at 4:00 a.m."

(5) On the point as regards the place where the writing work relating to Raid Proceedings were conducted, PW8/Panch witness has deposed in this respect as under:-

"Memo Ex.PW/B was prepared at Anti Corruption Branch. The bottles were sealed at PS Bhajan Pura. The Post Raid Proceedings Ex.PW/G were drawn at Anti Corruption Branch....."

At another stage, said PW8/Panch witness has deposed in this respect as under:-

"The writing work was done after coming from the raid at PS: Civil Lines."

Whereas PW9/Raid Officer by taking contradictory stand has deposed in this respect as under:-

"The Post Raid Proceedings Ex.PW/G were conducted while sitting in the room of Insp. Rajesh. All the proceedings regarding the seizure of bribe

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money, the seizure of bottles, rukka etc. were conducted in the room of Insp. Rajesh."

(6) On the point as to from where the money was recovered, PW1/complainant has deposed in this respect as under:-

"Accused Baby Khan became perplexed and she had thrown away the money on the seat of the car. Panch witness with the help of W/Sub Inspector Kaushal Pandey picked up the notes."

whereas PW8/Panch witness by taking contradictory- stand has deposed in this respect as under:-

"Thereafter, on the asking of officials of Anti Corruption Branch I recovered the GC notes from accused Baby Khan and handed over the same to Insp.Sangha."

Whereas PW9/Raid Officer by taking contradictory stand has deposed in this respect as under:-

"Thereafter, accused Baby Khan extended those GC notes towards me and I instructed the Panch witness to take the bribe money from accused Baby Khan. Panch witness took those GC notes from accused Baby Khan."

(7) On the point as to whether accused Baby Khan was alone in the car or the driver was there in the car when she reached Mrignayani Restaurant, PW8/Panch witness has deposed in this respect as under:-

"The car of Baby Khan stopped in front of Mrignayani Restaurant and not on the other side of the road. In that car there was nobody else except Baby Khan."

Whereas PW9/Raid Officer by taking contradictory stand has deposed in this respect as under:-

"Driver of Baby Khan was driving the car when she left Mrignayani Restaurant. Driver of Baby Khan was present at the spot at the time of raid."

(8) On the point as to when and how the Raiding team left PS Bhajan Pura for AC Branch, PW8/Panch witness has deposed in this respect as under:-

"We left PS Bhajan Pura at about 8:00-8:30 P.M. Myself, complainant and Insp.Sangha came in one vehicle from PS: Bhajan Pura to Anti Corruption Branch and I do not know about the other. I do not know how Baby Khan from PS Bhajan Pura was taken to Anti Corruption Branch."

Whereas PW9/Raid Officer by taking contradictory stand has deposed in this respect as under:-

"We left PS: Bhajan Pura after the raid in between 9:00 to 10:00 p.m. for Anti Corruption Branch along with both the accused persons and other members of the raiding team. The complainant was freed from the spot and rest of the members of raiding team along with both the accused persons returned to Anti Corruption Branch in one government vehicle."

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Whereas PW21/IO by taking contradictory stand has deposed in this respect as under:-

"I left PS: Bhajan Pura for Anti Corruption Branch at about 10:15 p.m. along with Raiding team and both accused persons. Complainant and Panch witness were freed from the spot. They have not come to Anti Corruption Branch along with me."

Whereas PW1/complainant by taking contradictory stand has deposed in this respect as under:-

"We had left from PS Bhajan Pura after the trap at about 8:00 or 8:30 P.M. for AC Branch. Inspector M.S.Sangha, Inspector R.S.Yadav, Mr.Joshi, ACP who had come from AC Branch had all returned with us from PS Bhajan Pura after trap. Both the accused persons were also brought by the raid team along with, them at AC Branch."

(9) On the point as to who had brought the accused persons from the spot to AC Branch and by what time, PW5/ACP R.K.Joshi has deposed in this respect as under:-

"On the direction of senior official I moved to PS Bhajan Pura and reached the Police Station at about 6:30/6:45 P.M. When I reached there I met Inspector Sangha and other staff near the office of Rajesh Kumar. I remained present on the spot for about 1 or 1 ½ hour and thereafter we came back to AC Branch....."

As regards my statement about the word "we" it includes the staff who was with me and the accused persons i.e. Rajesh Kumar and another lady. I cannot say whether the members of raiding party also returned to AC Branch at that time only as they were having separate vehicle and had not travelled in my vehicle. As per the time period stated, It could be around 9:00 p.m. that we reached AC Branch."

Whereas PW21/IO by taking contradictory stand has deposed in this respect as under:-

"I left PS Bhajan Pura for Anti Corruption Branch at about 10:15 P.M. along with the raiding team and both the accused persons. Complainant and Panch witness were freed from the spot. They have not come to Anti Corruption Branch along with me"

(10) On the point as to whether PW9/Raid Officer and PW21/IO were having mobile phone during the Raid Proceedings, PW9/Raid Officer has deposed in this respect as under:-

"It is correct that I got two mobile phones issued officially from Anti Corruption Branch before proceeding for raid. I do not remember the numbers of those mobile phones. I cannot say if the numbers were 9810148126 and 9810148127"

Whereas PW21/IO by taking contradictory stand has deposed in this respect as under:-

"I was not having any government cell phone. I do not know if the Raid Officer was having cell phone. "

However, the Call Record of Mobile Phone no.9810148126 of PW9

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M.S.Sangha which is Ex.D1W5/A2 and the Call Record of Mobile Phone no. 9810148127 of PW21/IO which is Ex.D1W5/A1 reflect that both of them had talked to each other on their said mobile phones 18 times from 3:36 p.m. to 5:40 p.m. when they were on raiding duty.”

12. On the basis of the aforesaid contradictions, the Trial Court concluded that the inconsistencies and discrepancies in the Prosecution’s case were not minor or inconsequential, but rather substantial in nature. The Court held that these contradictions were material, and went to the very root of the matter, thereby undermining the credibility and reliability of the Prosecution’s version.

13. Pertinently, in addition to highlighting the contradictions and discrepancies in the evidence adduced by the Prosecution, the Trial Court also observed that the foundational element of the case, namely, the alleged demand for bribe, was not substantiated. In this regard, the relevant findings of the Trial Court are as follows:

“24. From the perusal of the record, it is reflected that the stand of the prosecution regarding the demand of bribe by the accused Rajesh Kumar from the complainant could not be found established by the prosecution in view of several inconsistent depositions of PW1/complainant at different stages which is further found contradicted from the Call Record of the Mobile Phone no. 9811158608 of complainant Puran Chugh Ex. PW3/C12 to C17 and Call Record of Mobile Phone No. 9811032761 of accused Kanwar Jahan @Baby Khan which is Ex.PW3/CL to C11 coupled with the Mobile ID Chart Ex.PW20/D.

(A) As PW1/complainant has deposed that on 20th May, 2000 he received a phone call on his mobile from accused Rajesh Kumar asking him to meet in his Office and thereafter, on 22.05.2000 when he met accused Rajesh Kumar in his Office at PS Bhajan Pura, accused Rajesh Kumar asked him about the purpose of his visit there and also asked him whether he had brought Rs.1 Lac or not and the said deposition of the complainant concerning accused Rajesh Kumar appear to be contradictory in nature as on the one hand, he was asking him about the purpose of visit there and on the other hand, asking the complainant as to whether he had brought sum of Rs. 1 Lac specifically when there was no such previous demand by the accused Rajesh Kumar from the complainant.

(B) As per Complaint Ex.PW1/A, the accused Rajesh Kumar had again

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made a phone call on the Mobile of the complainant and scaled down his demand to Rs.70,000/- and then to Rs.25,000/- but PW1/complainant in his deposition has stated that on dated 23rd May, 2000, he had received one phone call on his Mobile at 10.05 a.m. when he was at Yamuna Vihar and another call at 5:00 p.m. when he was at CBI Office from accused Rajesh Kumar demanding money from him. The said deposition of PW1/complainant regarding receipt of phone call on his Mobile on 23rd May, 2000 at 10.05 a.m. is found falsified from the Mobile Phone Call Record of the complainant EX.PW3/C12 to C17 due to absence of any incoming call between 9:18 AM to 12:25 AM on 23.05.2000 on the Mobile phone of the complainant. Furthermore, the deposition of PW1/complainant that he had received phone call from accused Rajesh Kumar at 5:00 PM on dated 23rd May, 2000 when he was in CBI Office, is also found falsified from the Mobile Phone Call Record of complainant Ex.PW3/C12 to C17 and Cell ID Chart Ex.PW20/D which reflect that the complainant was present from 4:53 PM onwards at Yamuna Vihar which is far away from the location of CBI Office at Lodhi Road and therefore, said deposition of the complainant could not appear to be trustworthy. Furthermore, though in his Complaint Ex.PW1/A, the complainant has stated that accused has scaled down his demand to Rs.70,000/- and thereafter, to Rs.25,000/- but said complainant/PW1 has not deposed in the court in this aspect.

(C) PW1/complainant has further deposed that he talked to accused Baby Khan on dated 24.05.2000 at about 11:00 a.m. and she asked him to come at Mrignayani Restaurant with Rs.25,000/- at about 12:00 noon for which she declined being unable to arrange such amount within short period but in his Complaint Ex.PW1/A, said complainant has taken the contradictory stand by stating therein that when he talked to accused Baby Khan on Mobile phone at about 11:00 a.m. on 24.05.2000, Baby Khan asked him to bring Rs.25,000/- at 3:00 p.m. at Mrignayani Restaurant at Dilshad Garden. Thus, the contents of said part of Complaint Ex.PW1/A is found contradicted from the deposition of complainant/PW1 before the court in this respect.

(D) PW1/complainant by again taking contradictory stand has deposed that when he met accused Baby Khan at Mrignayani Restaurant, she demanded Rs.50,000/- to which he responded that he has brought Rs.25,000/- and declined to pay the said amount to her.

(E) The complainant/PW1 has further deposed that when he met accused Rajesh at his Office on 24.05.2000, he demanded Rs.50,000/- from him.

25. Furthermore, in case there was any demand of bribe by the accused Rajesh Kumar from the complainant on dated 22.05.2000, there is no reason as to why the complainant had not lodged any complaint in this respect to Sri Rama Krishnan, Special Commissioner of Police, Delhi with whom the said complainant had good relations and the complainant has stated that he had already intimated said Sri Rama Krishnan, Special

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Commissioner of Police, Delhi on dated 18th May, 2000 about the factum of bringing of the complainant by accused Rajesh Kumar to PS: Bhajan Pura on dated 17th May, 2000 as said complainant/PW1 has deposed in this respect as under:-

“On 18th May, 2000 I went to Sri Rama Krishnan, Addl. Commissioner of Police. I know him personally and told him about my alleged arrest, insult and humiliation by Inspector Rajesh Kumar. I did not give him anything in writing. He (Rama Krishnan) asked his P.A. Sharwan Kumar to inquire into the matter.”

26. *Furthermore, from the perusal of DD No.7 dated 18th May, 2000 as lodged at 4:40 p.m., copy of which is Ex.PW4/D5, it is clearly reflected that said Sharwan Kumar P.A. to Sri Rama Krishnan, Special Commissioner of Police, Delhi had already inquired the matter in this respect and therefore, the subsequent demand of bribe by the accused Rajesh Kumar on dated 22.05.2000 from the complainant after having knowledge of the fact that complainant was having good contact with Sri Rama Krishnan, Special Commissioner of Police, does not inspire credence.*

27. *In view of the aforesaid contradictory stand of the complainant in his court deposition and as per his Complaint Ex.PW1/A, which further found contradicted from his Mobile Call Record Ex.PW3/C12 to C17, and Cell ID Chart Ex.PW20/D, the demand of bribe by the accused Rajesh Kumar through accused Baby Khan could not be established by the prosecution.*

28. *Since the prosecution has failed to establish regarding the factum of the demand of bribe by the accused persons from the complainant, the presumption as contemplated U/S 20 of Prevention of Corruption Act, 1988 cannot be attracted in this case and my said view is found supported from the judgment as rendered by Hon'ble Supreme Court of India in the case reported as AIR 2007 SC 489 “V.Venkata Subbarao vs. State represented by Inspector of Police, A.P.” In Para 24 of the said judgment, it was observed by Hon'ble Supreme Court of India as under:-*

“Submission of the learned counsel for the State that presumption has rightly been raised against the appellant, cannot be accepted as, inter alia, the demand itself had not been proved. In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved”.

29. *In the absence of proof of “Demand of bribe” by the accused persons, I am of the considered view that the accused Rajesh Kumar cannot be held liable for penal provisions U/S 7 and Section 13 (2) r/w Section 13 (1) (d) of Prevention of Corruption Act, 1988 and accused Kanwar Jahan @Baby Khan cannot be held liable for offence punishable U/S 12 of Prevention of Corruption Act, 1988 for abatement of the commission of offence punishable U/S 7 of Prevention of Corruption Act,*

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1988 by accused Rajesh Kumar for which they have been charged with and my said view is found supported from the following judgments:-

- (1) 2006 (1) see 401 “T.Subramanian Vs. State of Tamil Nadu”
- (2) 2005 CrL.L.J. 1136 “State of H.P. Vs. Sukhdev Singh Rana”
- (3) 2007 CrL.L.J. 2919 “State of M.P. vs. Anil Kumar Verma”
- (4) 2006 (3) RCR (CrL.) 796 “AmritLal vs. State of Punjab”
- (5) 2000 CrL, L.J. 4591 “State of M.P. Vs. J.B.Singh”
- (6) 2006 (1) RCR (CrL.) 314 “L.K.Jain vs. The State”
- (7) 2005 (4) RCR (CrL) 716 “R.V.Subba Rao Vs. State”
- (8) AIR 1979 SC 1408 “Suraj Mai Vs. State”
- (9) 1992 (3) RCR (CrL.) 139 “Pritam Singh vs. State of Haryana”
- (10) 2009 (4) LRC 275 (SC) “State of Maharastra Vs. Dnyaneshwar Laxman Rao Wankhede”

30. Furthermore, there is nothing on record to establish that both the accused persons have entered into any criminal conspiracy to raise demand and accept any bribe amount from the complainant and therefore, they cannot be held liable for offence punishable U/S 120-B r/w Section 7 and 13 (D) (d) of Prevention of Corruption Act, 1988 for which they have been charged with.

31. In view of the aforesaid discussion, I have no hesitation to safely conclude that the prosecution has failed to establish its case against the accused persons for the charged offence whereby resulting in acquittal of both the accused persons and therefore, both the accused persons namely Rajesh Kumar and Kanwar Jahan @Baby Khan are ordered to be acquitted of the charged offence. Resultantly, their bail bonds stand cancelled and their sureties stand discharged.”

14. The judgments relied upon by the Trial Court, as extracted above, reaffirm the well-settled legal principle consistently reiterated by the Supreme Court, that the demand for illegal gratification by the accused is a *sine qua non* for the constitution of an offence under Sections 7 and 13(1)(d) of the PC Act. It is incumbent upon the Prosecution to discharge the burden of proof that the accused had made such a demand from the complainant. In this regard, it is apposite to refer to the findings of the Supreme Court in the judgement in **State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede**,⁷ the relevant portion of which is extracted below:

“16. Indisputably, the demand of illegal gratification is a *sine qua*

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non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-à-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.”

15. In view of the aforesaid facts and circumstances, it is evident that the Trial Court conducted a comprehensive evaluation of the Prosecution’s evidence, and observed that the testimony of key witnesses was riddled with glaring contradictions and material inconsistencies. In the opinion of the Court, these discrepancies significantly undermine the Prosecution’s ability to establish the foundational element of the alleged offence: ‘the demand for illegal gratification’. In light of these infirmities, the Prosecution’s version is indeed unreliable. Since the essential ingredient of demand remained unproven, the Trial Court was justified in giving benefit of doubt to the accused and acquitting him.

16. Having considered the entire record and the reasons given by the Trial Court, this Court finds no ground to interfere with the judgment of acquittal. The conclusions drawn by the Trial Court are based on a plausible appreciation of the evidence and do not suffer from perversity or disregard of settled principles. It is well-established that when multiple views are possible based on the evidence on record, the view favourable to the

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accused, adopted by the Trial Court, should not be disturbed by the Appellate Court. Accordingly, the observations made by the Trial Court in this regard cannot be deemed unsustainable, perverse, or contrary to the record, such that they require further consideration for this Court to grant leave to appeal.

17. In view of the above, the present leave to appeal is dismissed.

SANJEEV NARULA, J

APRIL 28, 2025/ab

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