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

% ***Reserved on: 10th January, 2025***
Pronounced on: 2nd April, 2025

\+ CRL.M.C. 1085/2021 & CRL.M.A. 5557/2021

A N PRASAD .....Petitioner

Through: In person with Ms. Anjana Prakash, Senior Advocate with Mr. Kumar Mihir, Mr. Anwesh Madhukar, Ms.Prachi Nirwan, Mr. Niraj Dubey, Mr.Pradum Kumar & Mr. Atul Joseph, Advocates

Versus

CENTRAL BUREAU OF INVESTIGATION .....Respondent

Through: Mr. Anupam S. Sharrma, Special Public Prosecutor with Mr. Prakarsh Airan, Mr.Harprit Kalki, Mr.Ripudaman Sharma, Mr.Syamantak Modgill, Advocates

Mr.Rizvi, Advocate for Complainant

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 482 of the *Code of Criminal Procedure,* 1973 (‘Cr.P.C’ *hereinafter*) has been filed on behalf of the Petitioner for setting aside the Order dated 27.11.2020 *vide* which the Closure Report filed by the Respondent- CBI in FIR RC-DAI-2019-A0022, under Section 120 B read with Sections 7/12/13(2) and 13(1)(d) of *Prevention of Corruption Act, 1988*

has been rejected and Order dated 15.02.2021 *vide* which he has been summoned.

2. ***The brief background, as spelt out by the Petitioner*** is that upon his selection by UPSC in February, 2017, he joined Employees State Insurance Corporation *(henceforth referred to as "ESIC")* as Deputy Director and was promoted to the post of Joint Director in March, 2008. He performed all his duties and responsibilities with full devotion and commitment and his ACR/APAR has always been above the zone of consideration and he had received commendations for his work as well.

3. **Procurement Demand of 10 Racks:** On 25.08.2017, requisition of 10 Racks was made by the Medical Record Officer- *Prem Raj* to the Medical Superintendent, ESIC Hospital, Basaidarapur. On 30.08.2017, the Assistant Director-*Narendra Dahiya*, issued a direction to Non-Medical Store for procurement of the Racks on urgent basis. The concerned Dealing Assistant- *Jagdish Prasad* proposed that a Purchase Committee may be constituted and put the said requisition for approval/order of the Medical Superintendent and submitted for its procurement, which was approved by the Medical Superintendent- Dr. S.K. Raju on 06.09.2017 who constituted a Purchase Committee and nominated three Members, namely, Dr. Rajpal, In-charge Hospital Store; Mr. Narender Dahiya, Assistant Director and Mr. Vijay Kumar, Deputy Director, Finance. The Committee submitted its Report 11.09.2017 and recommended purchase of Racks from *M/s Vansh Industries,* which travelled from Dealing Assistant to Assistant Director to the Petitioner(Joint Director) and then to the Medical Superintendent, who approved it on 12.09.2017.

4. On 15.09.2017, with the concurrence of Deputy Director (Finance)- *Vijay Kumar,* Supply Order for purchase of Racks was issued on 16.09.2017.

5. **No objections raised in Procurement Process:** The Medical Superintendent nominated the Assistant Director as the Verifying Officer who inspected the Racks 24.10.2017 and on 31.10.2017. The Dealing Assistant submitted a noting that the Racks were as per the Supply Order as was verified by the Assistant Director, and requested the Medical Superintendent to sanction the Invoice/Bill amount for payment to the Vendor/Supplier. The Proposal was approved by Assistant Director, who found it in order and raised no red flag and forwarded it to the Petitioner, Joint Director; who thereafter submitted it to the Medical Superintendent for sanction.

6. **Excess Money and Server Issues:** On 31.01.2017, the Supplier's Representative, Mr. Savinder Kumar came to his Office and during conversation, according to the Petitioner, he realized that the Supplier had charged excess money for the sale of the Racks and other Articles. He recovered excess money of Rs.49,000/- from the Supplier, but he could not generate the Challan for deposit of the said money due to Server/ Networking issues on 31.01.2017, which continued on 01.11.2017 and 02.11.2017. The Petitioner made an attempt to inform the Medical Superintendent but could not do so due to his preoccupation. The Challan was generated on 03.11.2017 and when he called for the File for making a Noting in it, he found that the Sanction Memo Number was already mentioned, thereby indicating that the Medical Superintendent had already

sanctioned the Invoice bill for payment. However, the Petitioner still made the *Office Noting* and marked it to the Medical Superintendent. He himself carried the file to the Medical Superintendent and narrated the entire incident.

7. The Petitioner received his Transfer Order dated 20.12.2017 from ESI Hospital, Basaidarapur, New Delhi. Before relieving, he submitted a Confidential Note dated 26.12.2017 to the Director General, ESI Hospital about the incident and was finally relieved on 28.12.2017.

8. **Complaint dated 14.03.2018 against the Petitioner:** On 14.03.2018 pseudonymous Complaint dated 14.03.2018 was made by one *Mahender Singh* with a CD with the allegation of Bribe against the Petitioner. According to the Petitioner, investigations were directed against him in violation of CVBC/DoPT directions/guidelines.

9. In the meanwhile, Petitioner received his Promotion Order dated 11.06.2019 to the post of Director w.e.f. August, 2014 and he was due for promotion to the post of Additional Commissioner.

10. However, after inordinate delay, on 01.07.2019 the FIR No. RC No. DAI/2019/A0022/ACB/CBI/New Delhi Under Section: 120B IPC r/w Sections 7/12/13(2)/13(1)(d) of *Prevention of Corruption Act, 1988* was registered against him and Mr. Savinder Kumar, the Supplier Representative on the basis of the complaint dated 07.06.2019 made by Mr. Shivendra Kumar, Deputy Director, Vigilance, ESIC.

11. **Closure Report dated November 2020**: The Respondent/CBI *(henceforth referred to as the "CBI")* after due investigation submitted its

Closure Report dated 01.07.2019. ***The Closure Report*** stated that a Complaint dated 07.06.2019 was filed by Mr. Shivendra Kumar, Deputy Director (Vig.) ESIC, alleging that a Complaint dated 15.02.2018 along with one CD was received from one Mahender Singh, pursuant to which a Departmental Enquiry was conducted against A.N. Prasad, Joint Director, ESI Corporation while he was posted and working as Joint Director (Admn.). It was alleged in the Complaint that he had demanded and accepted bribe of Rs.49,000/- from Savinder Kumar, Representative of *M/s Vansh Industries* and *M/s Kansal Industrial Corporation*, which was engaged for supply of miscellaneous material to the hospital. Bill/Invoice No.12/13 dated 24.10.2017 and Bill Nos.14 & 15 dated 25.10.2017 of Vansh Industries and Bill/Invoice No.13 dated 26.10.2017 of Kansal Industrial Corporation was submitted to ESIC Hospital by Savinder to claim the payments against them. Petitioner-A.N.Prasad demanded 7% of the Bill amount which matched with the amount of Rs.49,000/-. The said incident of secret demand and acceptance of bribe was video graphed in the CD enclosed and when A.N. Prasad came to know that his demand and acceptance of bribe was videographed, he as an afterthought on a frivolous plea that he had discussed with the vendor in respect of exorbitant rates for the purchase, deposited the said amount in the accounts of ESIC after two days.

12. **CDs also received at ESIC Headquarter***: As per Closure Report,* further investigation revealed that a letter dated 08.03.2018 issued by A.U.K. Khaldy, Section Officer enclosed with photocopy of Complaint of Sh. Mahender Singh R/o A-74, New Ashok Nagar, Delhi-110096, with a

DVD make- '*Moserbaer'* containing two video files in a folder were received in *ESIC Headquarter*, Panchdeep Bhawan, CIG Marg, New Delhi. Another CD along with a UO Note of Administration Division, ESIC Hqrs Office was also received in the *Vigilance wing of ESIC,* HQ, New Delhi which was also downloaded by them from open social media platform. The above said DVD/CD was having content/ video which was supposed to be recorded by Savinder Kumar on 31.10.2017 in the room of Petitioner.

13. **Missing Files:** It is also noted in the Closure Report that out of four concerned files pertaining to M/s Vansh Industries and M/s Kansal Industrial Corporation , containing Note-Sheet portion, three could not be traced and only one file pertaining to Invoice/ Bill No.15 dated 25.10.2017, could be recovered.

14. Petitioner admitted having received sum of Rs.49,000/- from Savinder Kumar and stated that he had deposited it in ESI fund on 03.11.2017 and pleaded that this money was taken on account of inflated price taken by the vendor and that he had also made an endorsement on Bill No.15 , but the said Note was not approved by Mr.S.K. Raju, Medical Superintendent, ESIC Hospital.

15. **Server Dysfunction:** ***The Closure Report further noted that*** the Petitioner had pleaded that the said amount of Rs.49,000/- could not be deposited in the bank because the server of ESIC was very slow from 01.10.2017 to 02.11.2017, but the investigation revealed that during the said period, Server was not fully dysfunctional.

16. **Mobile Phone and Video from CD:** The investigations revealed that when Savinder Kumar met the Petitioner in his room on 31.10.2017, he

recorded a video from his mobile phone wherein both of them were negotiating and fixing the percentage / amount of Rs.49,000/-. In the said video, petitioner is seen receiving the said amount from Savinder Kumar. However, face of person namely Savinder Kumar is not featuring in the video and only Petitioner is seen.

17. During investigation, Savinder Kumar disclosed that the mobile phone on which alleged video was taken, was formatted/deleted and thereafter was sold to Manoj Verma. The said mobile phone was recovered from Manoj Verma and was sent to FSL to recover the alleged deleted/ formatted video.

18. CD/DVD received in the Vigilance Department from Ministry of Labour and Employment in ESIC, HQ, New Delhi, containing video of transaction of amount of Rs. 49,000/- between AN Prasad and Savinder, and one CD downloaded from the open social media platform by ESIC, New Delhi, were checked. One other CD containing conversation between S.K.Raju and Petitioner relating to the incident dated 31.10.2017 was also recovered from *Vigilance Department of ESIC*, which was produced by the Petitioner during Departmental Enquiry.

19. The Closure Report mentions that there is a little bit of correlation but there were ambiguities in the audio file as its date, time and exact identification could not be done. *Also, original source / mobile phone was not available and the audio file was copies in CD, and as such, it had no evidentiary value.*

20. **FSL Report on CD/ Mobile Phone Clipping:** The content of transaction was available only in DVD, but the said content was not

readable in the CD, and was sent to FSL for recovery of the alleged video. Admittedly, the Administration of ESIC had downloaded /taken the said video from open social media platform.

21. The result of both the exhibits i.e. mobile phone and CD were received from FSL, but the questioned video could not be retrieved even from the original source i.e. the mobile phone.

22. *The Closure Report mentions that it also came to the notice that the alleged video was viral on various media platforms in 2018 and there is every possibility that any other person might have sent the video to ESIC.*

23. **Efforts to Locate the Complainant Mahender Kumar:** The Closure Report also mentioned that the Complainant- *Mahender Kumar* was attempted to be located at the address mentioned in the Complaint but *'no such person was found residing at the given address'*. After strenuous efforts, the said person could be traced but he denied having made the Complaint or having knowledge of any fact mentioned in the Complaint.

24. ***The Closure Report, thus, concluded*** that no independent eye witness could be found who has seen or heard the incident of bribe happened before him. The only evidence was the copies of video in DVD/CD to establish the transaction between the suspects, but in the absence of original source of video clippings, it had no evidentiary value. There was no sufficient evidence or direct evidence to prosecute the Petitioner and *Savinder Kumar*.

25. ***The learned Special Judge vide impugned Order dated 27.11.2020*** disagreed with the Closure Report and observed that Petitioner's plea that he

had taken the money from *Savinder Kumar* as rebate, does not seem tenable at that stage and it could be decided only after trial of the case. No such Note with regard to the inflated price or the rebate offered by Savinder Kumar was placed or approved by the Higher Authorities of the Hospital. There has been no correspondence between the Petitioner and Savinder Kumar in this regard. It was further observed that the Petitioner had failed to explain as to why he did not deposit the amount of money on 31.10.2017 itself and why he delayed it till 03.11.2017 and his plea of Slow Server from 31.10.2017 till 01.11.2017, was found to be incorrect.

26. The learned Special Judge, CBI rejected the Closure Report *vide* Order dated 27.11.2020 and directed the Investigating Officer to obtain Sanction for prosecution of the Petitioner under *Prevention of Corruption Act, 1988*.

27. Upon receipt of Sanction Order dated 22.01.2021, the learned Special Court *vide* Order dated 15.02.2021 ***took cognizance*** of the offence under Section 120B IPC read with Sections 7/12/13(2) read with Section 13(1) (d) of the *Prevention of Corruption Act, 1988* against the Petitioner and the Supplier- *Savinder Kumar*, and issued summons against them.

28. ***The grounds on which the Orders dated 27.11.2020 and 15.02.2021*** have been assailed by the Petitioner are that the learned Special Judge did not appreciate that the Central Vigilance Commission as well as the DoPT have issued instructions and Circulars that *'no action should at all be taken on anonymous complaint. They must be filed.'* which has time and again been reiterated vide Circulars dated 29.06.1999; 18.10.2013; 18.06.2014; 25.11.2014; 31.03.2015; 07.03.2016; 08.10.2018 and 24.09.2020.

29. The Petitioner has submitted that no Mahender Singh, the alleged Complainant was found on the address given in the Complaint. He was eventually traced in Orriya, UP, but he denied having made this Complaint or the video and therefore, no action can be taken on such a Complaint.

30. There is no allegation/fact on record that the Petitioner had called the Supplier before he affixed his signature on the File Noting for sanction of payment. In fact, there is no allegation/fact on record that the Petitioner had contacted the Supplier before affixing his signature on the File Noting. In fact, the Petitioner, without any delay, had signed on the Office Noting as had been forwarded by Assistant Director- Narender Dahiya.

31. There is no material on record to show '*demand*' made by the Petitioner from the Supplier- *Savinder Kumar* or *'acceptance'* of bribe of Rs.49,000/- as is alleged by the Prosecution to justify a trial under *The Prevention of Corruption Act, 1988.*

32. ***Learned Senior Counsel for the Petitioner*** submitted that to establish "*bribe",* a procedure has been prescribed under the law and mere giving or taking of money, does not amount to an offence, when the essential ingredients are not present. The Petitioner had infact, in discharge of his official duties and acting in accordance with the General Financial Rules and the CCS (Conduct) Rules, took the money for the benefit of ESI Corporation and deposited the same which resulted in the benefit to the Organization.

33. It was vehemently submitted that Petitioner was not a member of the Purchase Committee nor he had authority to nominate the members of the Committee. Also, he had no authority to approve or disapprove the

recommendation of the Purchase Committee nor was he the Verification Officer. He had no authority or power to sanction the Bill/ Invoice amount or to release the Sanction Order in online or offline mode. He was never involved with the purchase, procurement or in the decision making to influence the purchase at any stage.

34. The learned Special Judge did not consider that due process and procedure was followed at each stage by the nominated Officers of the Competent Authority and it is only after interacting with the Representative of the Supplier, the Petitioner realized about overpricing/ excess billing. He took instant action to recover it and made a *Noting* on the file to his immediate Superior and also addressed a *Confidential Note* to the Director General, ESIC. It was submitted that the money received was submitted with the ESI Corporation and it is not the case that the Petitioner had received any valuable thing or pecuniary advantage and thus, no case under Section 134(1) (d) of the PC Act is made out.

35. Reliance is placed on *K R.Purshotaman Vs. State of Kerala* (2005)12 SCC 631 to submit that if there is no evidence on record that the accused had obtained for himself or for any other person, any valuable thing or pecuniary advantage, the accused cannot be convicted under Section 13(1) (d) of the PC Act.

36. The Petitioner was only the Officer below the Medical Superintendent and his role was only to ensure that the actions of different authorized/ nominated staff/officers were in accordance with the established procedure and the allegations of ESIC that the Petitioner is the Competent Authority to recommend, has no basis.

37. The allegations against the Petitioner are based upon assumption, presumption, conjecture and surmises, emanating from a pseudonymous Complaint to taint the *bona fide* action of the Petitioner to safeguard the financial interest of the Corporation. The Petitioner has immensely suffered in his promotion and positional up-gradation to the post of Additional Commissioner. He superannuated on 31.07.2020, but his financial dues and retirement benefits, have been withheld.

38. Thus, the Petitioner has sought that the impugned Orders dated ***27.11.2010 and 15.02.2021,*** be set aside.

39. ***The Petitioner in his Written Submission*** has asserted that there is no evidence for demand and acceptance. It is further submitted that *demand* is a sine qua non to establish an offense under the Prevention of Corruption Act, 1988.

40. Reliance for the same is placed on *CM Girish Babu v. CBI* (2009) 3 SCC 779; *A Subair v. State of Kerala* (2009) 6 SCC 586; *State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede* (2009) 15 SCC 200; *B Jayaraj v. State of Andhra Pradesh* (2014) 13 SCC 55; *P. Satyanaryana Murthy v. District Inspector* (2015) 10 SCC 152; *N. Vijaya Kumar v. State of Tamil Nadu* (2021) 3 SCC 687; *K Shanthamma v. State of Telangana* Crl. Appl. 261 of 2022.

41. ***Submissions heard and record perused.***

42. Before embarking on the facts of the present case, it would be pertinent to refer to the observations made by the Apex Court in *Swatantar Singh Vs. State of Haryana & Ors.* 1997 (4) SCC 14 that *Corruption is*

corroding like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralising the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke.

43. These observations about the prevailing corruption in the Government department was resonated by the Apex Court in the case of *A.B Bhaskars Rao Vs. Inspector of Police, CBI, Vishakhapatnam* 2011 (10) SCC 259 and *State of Madhya Pradesh Vs. Shambhu Dayal Nagar* (2006) 8 SCC 693 wherein it was noted that corruption in public servants had become a gigantic problem and no facet of public activity has been left unaffected by the stink of corruption.

44. The alleged acts of corruption are executed in secrecy and are often difficult to prove. With the advent of technology, though such acts do get recorded and brought in public domain, but the challenge still remains to get the legally admissible evidence which is often difficult to get, resulting in the benefit going to the accused.

45. This is also one such case where the FIR RC-DAI-2019-A0022, was registered against the Petitioner on the basis of a Complaint dated 07.06.2019 made by Mr. Shivendra Kumar Deputy Director, Vigilance, ESIC, wherein he stated that a Complaint dated 15.02.2018 was received along with video/CD from one Mahender Singh, which prompted a

Departmental Enquiry, which *prima facie* revealed that Petitioner, A.N. Prasad while posted and working as Joint Director, ESI Corporation, had demanded and accepted bribe of Rs.49,000/- from one Savinder Kumar, Representative of *M/s Vansh Industries* and *M/s Kansal Industrial Corporation*, engaged in supply of miscellaneous material to the Hospital.

46. The incident of demand and acceptance of illegal gratification was secretly video graphed in the CD enclosed with the Complaint. The case was thus, registered under Section 7/12/13(2) and 13(1) (d) of PC Act.

47. The contents of the video which went viral, may invoke feeling of disgust and contempt qua this alleged act, but before the Court of law it has to be established in the Charge-sheet by the prosecuting Agency/ Investigating Agency on the basis of legally admissible evidence that a *prima facie* case of corruption, is established.

48. *Section 7 of the* Act, (prior to its amendment in 2018), dealt with offences relating to public servants taking gratification other than legal remuneration, punishable with imprisonment for a minimum of three years and a maximum of seven years, along with a fine.

49. Section 12 of the Act (unamended) provides that *whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years, but which may extend to seven years and shall also be liable to fin*e.

50. ***Section 13(1)(d) (unamended)***, reads thus:-

"*13.Criminal misconduct by a public servant.—*

> *(1) A public servant is said to commit the offence of criminal misconduct,-*
>
> *(d) if he, —*
>
> *(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or*
>
> *(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or*
>
> *(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;*

51. ***Section 13(2)*** provides that *any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine*.

52. In *N. Narsinga Rao Vs. State Of Andhra Pradesh* (2001) 1 SCC 691, with regard to the nature and quality of proof necessary to sustain ingredients of Section 7 of PC Act and Section (2) read with Section 13 (1) (d) of the Act, in cases where the primary evidence of the Complainant is unavailable, it was observed that once it was established that there was a *demand or payment or acceptance of gratification* and *the foundational facts* were proved, the presumption for payment or acceptance of illegal gratification was applicable. Consequently, the legal presumption was to be drawn that the said gratification was accepted as a "motive or reward" for doing or forbearing to do any act as per Section 20 of the Act.

53. In the case of Neeraj Dutta Vs. State (Govt. of NCT of Delhi) 2022 SCC OnLine SC 1724, the Constitution Bench of Five Judges of the Apex Court with regard to the nature and quality of proof necessary to sustain ingredients of Section 7 of PC Act and Section (2) read with Section 13 (1) (d) of the Act, *in cases where the primary evidence of the Complainant is unavailable,* stated as under:-

> *"88. What emerges from the aforesaid discussion is summarised as under:*
>
> ***88.1.** (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.*
>
> ***88.2.** (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.*
>
> ***88.3.** (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.*
>
> ***88.4.** (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*
>
> *(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.*
>
> *(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public*

servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 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 Sections 13(1)(d)(i) and (ii), respectively of the Act.*** *Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.*

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.*

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

__88.7.__ (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

__88.8.__ (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.

[…]

__90.__ Accordingly, the question referred for consideration of this Constitution Bench is answered as under:

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

54. In the light of these principles, facts of the present case may be considered. The entire episode came to light by the Complaint dated 15.02.2018 along with video/CD received in ESIC office, allegedly made by one Mahender Singh, New Ashok Nagar, Delhi. However, during the investigations, Mahender Singh, the original Complainant, could not be found and after much search, he was traced in Orriya, UP but in his examination he denied having sent the Complaint with video, to the ESIC Hospital, New Delhi. He even denied the knowledge of any fact mentioned in the Complaint.

55. The first person who had allegedly raised the alarm bells, failed to support the Complaint. It is revealed in the investigation that the alleged Complaint did not have the genesis in Mahender Singh.

56. Savinder, the alleged bribe giver, in his statement recorded by the Investigating Agency had admitted that he had prepared this video on his mobile phone on the date of incident and after deleting the said video from his phone, he had sold the mobile phone to his friend Mr. Manoj Verma. The mobile phone was recovered from Mr. Manoj and was sent to FSL to retrieve the deleted video, but as per the FSL Report the same could not be retrieved. The primary/ source Video recorded in the Mobile phone thus, could not be recovered.

57. According to the Investigating Agency, the said video went viral on public media and they had down loaded the video from open social media platform. However, such copy of the video whose authenticity has not been established, cannot be a basis to claim that the factum of giving of bribe was even *prima facie* established.

58. Connected to this, another significant factor is that the Petitioner was confronted with the video wherein he admitted his face but the face of the giver was not visible. Therefore, the identity of the Giver or that there was any demand of bribe made to him, is not established from the evidence collected by the Investigating Agency.

59. There is no cogent evidence to prove who was the *bribe giver.* The only evidence that could be gathered by the Investigating Agency was disclosure statement of Savinder Kumar, which is inadmissible in law.

60. The second piece of evidence was the video prepared by Savinder Kumar on his mobile phone, but that also could not be retrieved by the FSL. *There is no evidence whatsoever, whether direct or circumstantial, of the factum of giving of bribe by Savinder Kumar to the Petitioner, A.N. Prasad.*

61. The other equally significant aspect is that *the factum of acceptance of the bribe needs to be established.* Petitioner has categorically denied having accepted any bribe of Rs.49,000/- . Although he has admitted the Video, but his admissions during investigations, are inadmissible in law and the prosecution has to stand on its feet to prove *giving and taking of the bribe*. The admission of the accused in the disclosure statement, is *per se* barred under law.

62. Interestingly, the Petitioner deposited Rs.49,000/- on the next working day i.e. on 03.11.2017, Monday in the morning itself. He has given a lame explanation that his money had been received by him from the Vendor as the procurement Contract was given at an inflated rate and Vendor/Accused-Savinder Kumar when confronted at the time of clearing the Invoices, admitted and gave him Rs.49,000/- as an excess taken by him in this procurement Contract. The Petitioner claiming himself to be an honest person, deposited this amount after two days on the opening of the office.

63. The investigations done by CBI, did infer from the circumstances that the Petitioner A.N. Prasad had demanded 7% of the Bill amount which matched with the amount of Rs.49,000/-, but again this was purely inferential and circumstantial, with no foundational legal evidence.

64. It has been argued that the Petitioner was neither the Sanctioning Authority for clearance of the bills nor a Member of the Purchase

Committee and thus, had no occasion to demand Rs.49,000/- as has been alleged by the Prosecution. However, it cannot be overlooked that this Rs.49,000/- were not on account of procurement of goods but for clearance of bills. There is no denial that the Applicant was one of the Officers through whom the file had to be cleared for payment of bills and it could have been delayed at his end, had he put an adverse note or not cleared the file for onward transmission to the Superior Officer. Therefore, to contend that there was no occasion for him to have taken the bribe of Rs.49,000/- is not tenable. Moreso, when the Prosecution has explained that this amount of Rs.49,000/- amounted to 7% of the bill amount which was to be cleared. However, mere fact that the Petitioner was found in possession of Rs.49,000/- without there being any cogent evidence of giving or taking of bribe may be a suspicious circumstance, but in itself does not complete the loop of establishing the commission of the offence.

65. In this context, it would also be pertinent to note that admittedly, the Applicant has given an explanation that this amount had been taken by him from Savinder Kumar as he had over charged for the goods that were supplied by him. This is a self-contradictory explanation in so much as the Applicant has asserted that he was neither a Member of the Purchase Committee nor in any way involved in the final approval of the bills. If he had nothing to do with the procurement or approvals, where was the question for him at the intermediate stage of clearing the file to be sent to the Superior Officer, to detect alleged over-billing or to allegedly confront Savinder Kumar for over pricing or to take the alleged excess amount of Rs.49,000/-. Clearly, his explanation does not have any justification, but it

is only his statements and explanations given by the Petitioner which are not admissible in evidence. *It is for the Prosecution to establish that there was bribe given and accepted by the Petitioner.*

66. It is also pertinent to note that according to the Petitioner, he had taken Rs.49,000/- as an over charge in purchase of goods, for the benefit of the Hospital. Even if this explanation of the Petitioner is accepted, then too there is no corresponding noting placed before the Superior Officer. He merely created a Noting but was never forwarded before any Superior Officer. The reason why the Petitioner created this Noting and deposited the amount in the Treasury on the next working day i.e. Monday, is clearly because in the interim the video showing him taking the bribe, went viral. In order to create a defence and to save himself from any implication, the Petitioner apparently, made a desperate attempt to establish his bona fide by seeking to deposit Rs.49,000/- in the Treasury.

67. Another interesting aspect is the explanation given by the Petitioner for delay in depositing the money in the Government exchequer which is that the *web server* was not working. However, during the investigations it was found to be incorrect as the server was working, though it was slow.

68. While the entire events may be placed together to understand the entire case, but it has to be established by cogent independent legally admissible evidence and the statements made by the petitioner during investigations are inadmissible. Pertinently, the only incriminating fact which has emerged is that Petitioner had Rs.49,000/- in his hand which he deposited in the Treasury after two days. The source from where this money, has not been established by any cogent admissible evidence.

69. In the case of *Neeraj Dutta* (supra) it was observed *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.*

70. The admissions made by the Petitioner though tell a gory story of corruption, but unfortunately the admissions / disclosure made by him are not admissible in law. *In the absence of any evidence of the source of Rs.49,000/- in the hands of the petitioner, it cannot be even termed as acceptance of bribe money, punishable under Section 7 of the Act.*

71. The FSL Report has been sought in respect of the Voice Samples of Petitioner and Savinder Kumar. Record reveals that IO Inspector A.K. Singh had taken their *Voice samples* on 20.11.2019 in CD in the presence of two witnesses and got the voice identification done on the same day by one Anurag Kumar, Deputy Director, Finance ESIC Hospital, Noida, UP, who identified the voice of Petitioner. Likewise, Narender Dahiya also identified the voice and picture of both, Petitioner and Savinder Kumar from the video that was prepared by the Inspector A.K. Singh.

72. Significantly, the Voice Samples were not sent to FSL for scientific matching, but was done by IO through the persons known to the Petitioner. There is no explanation as to why the Voices were not confirmed through FSL. Further, there is no evidence that Sh. Narender Dahiya had ever met Savinder Kumar or was competent to recognize his voice. There is no prima facie tenable evidence in regard to voice matching.

73. Even otherwise, mere voice identification from the samples of the two accused, cannot lead to any inference about the *prima facie* involvement of the two accused in giving or taking of the bribe. Pertinently, it cannot be overlooked that the video can only be a link or support evidence, but cannot be substituted as a primary evidence, especially when the source video or the incident itself has not been established by any primary cogent evidence.

74. In the case of *Neeraj Dutta Vs. State* (supra), it was stated that to establish an offence under Sections 13(1)(d)(i) and (ii) of the Act, of the obtainment of bribe, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would have to be established. However, there is no admissible evidence of any demanded being made by the Petitioner.

75. Unfortunate as it may be that the corruption has not spared even the Hospitals where people go for saving of their lives but sad as it may be, there is no *prima facie* evidence available against the Petitioner.

76. In view of the above, Order dated 27.11.2020 vide which the Closure Report filed by the Respondent CBI in FIR RC-DAI-2019-A0022, under Section 120 B read with Sections 7/ 12/13(2) and 13(1)(d) of *Prevention of Corruption Act, 1988* has been rejected and cognizance taken against the Petitioner by the learned Special Judge, is hereby set aside, and the Petitioner is discharged.

77. The Petition and pending Application are accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 02, 2025/r