



2025:DHC:9422



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

% ***Pronounced on: 26th September, 2025***

+ **CRL.A.315/2021**

TARA DUTT

S/o Sh. Tikaram

R/o 1/190, Khichripur, Delhi.

.....Appellant

Through: Mr. Kundan Chandravanshi and
Mr. Ravi Kumar, Advocates

versus

STATE

.....Respondent

Through: Mr. Shoaib Haider, APP for State
with SI Neeraj P.S. Subzi Mandi.

+ **CRL.A.319/2021**

1. **MUKUL KUMAR**

S/o Sh. Ramesh Kumar

2. **RAMESH KUMAR**

S/o Late Sh. Ram Chander

Both R/o :

H.No.1/212, Khichripur,

Delhi-110091.

.....Appellants

Through: Ms. Sushma Sharma, Advocate.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Shoaib Haider, APP for State
with SI Neeraj P.S. Subzi Mandi.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid two Appeals have been preferred by *Appellant Tara Dutt*, and Appellants *Mukul Kumar and Ramesh Kumar* respectively, to



challenge the Judgment dated 27.09.2021 vide which they have been convicted for the offence under Section 12 Prevention of Corruption Act (PC Act) and have been sentenced to three years imprisonment and Fine, by the learned Special Judge in Complaint Case No.183/2019 pertaining to CNR No. DLCT 11-000885-2019.

2. *The facts in brief* are that one Dayanand Sharma (since deceased) who had worked as a Court Master in the Delhi High Court, retired in 2011, and thereafter worked as a Special M.M. in the MCD. He retired from this service in 2015. Dayanand Sharma was related to the appellant ASI Tara Dutt, being his “*Chachia Sasur*”.

3. The *Co-Appellant/Mukul Kumar* qualified the written examination for the post of Peon in the Delhi District Courts, and his interview for this post was scheduled for 27.08.2017. Sh. Chandra Shekhar, ASJ was a part of the Selection Committee. ASI Tara Dutt, who knew Co-Appellant Mukul Kumar and his father/Co-Appellant Ramesh Kumar, being their neighbours, contacted Dayanand Sharma, who while working as a Court Master at the Delhi High Court, had met the learned ASJ two to three times and claimed to have become known to him.

4. Appellant Tara Dutt conveyed to the other co-Appellants, Mukul Kumar and Ramesh Kumar, that he could get their work done if Rs. 50,000/- were given to the learned ASJ for favouring Mukul in the interview. Accordingly, Appellant Mukul and his father Ramesh Kumar arranged Rs. 50,000/- and contacted ASI Tara Dutt to get Mukul selected in the interview to be held on 27.08.2017 at Tis Hazari Courts, Delhi.

5. ASI Tara Dutt went to the Court premises on 26.08.2017 and contacted HC Surender Kumar, who was posted as Naib Court with the



learned ASJ, and requested a meeting with him in his Chamber, by making a reference of Dayanand Sharma. ASI Tara Dutt even showed the *Visiting Card* of Dayanand Sharma to confirm the contact, but refused to give the card to HC Surender Kumar, who then took a photocopy of it. The learned ASJ told HC Surender Kumar that he did not know any such person and declined to meet ASI Tara Dutt, and left for lunch. While leaving, the learned ASJ remarked to HC Surender Kumar that ASI Tara Dutt had probably come to meet someone else.

6. HC Surender Kumar informed about this remark to ASI Tara Dutt, who was present outside the courtroom. ASI Tara Dutt then called Dayanand Sharma at 13:14 hours and thereafter, confirmed that he had come to meet the learned ASJ only. ASI Tara Dutt then handed over an envelope to HC Surender Kumar, to be delivered only to the learned ASJ. On returning to the Chamber, HC Surender Kumar on the asking of learned ASJ, opened the envelope which was found to contain a copy an Interview Letter of Appellant Mukul Kumar and 25 currency Notes in the denomination of Rs. 2,000/- each, totalling to Rs. 50,000/-.

7. The written Complaint dated 26.08.2017 was given by the learned ASJ, which was received vide DD No.23-A. *FIR No.215/2017 under Section 12 PC Act* was registered.

8. Investigations were carried out and the Chargesheet under Section 12 PC Act was filed against the three Appellants and Dayanand Sharma, before the learned Special Judge, CBI.

9. *The Charges were framed vide Order dated 21.01.2019 for offences under Section 12 PC Act read with Section 120B IPC against all four*



accused persons namely Tara Dutt, Mukul Kumar, Ramesh Kumar, and Dayanad Sharma.

10. During the pendency of the trial, Dayanand Sharma (co-accused) expired on 17.04.2019, and the proceedings were abated against him, vide Order dated 07.05.2019.

11. The Prosecution, in support of its case, examined 22 prosecution witnesses.

12. **PW1/ASI Satish Chander** has deposed in relation to the registration of the FIR 215/2017. **PW2/Israr Babu** Nodal Officer of Vodafone Idea has proved the Customer Application Form for mobile no. 8447462346; **PW7/Ajay Kumar** Nodal Officer of Bharti Airtel has proved the Customer Application Form for mobile no. 9910043160; **PW17/Pankaj Sharma** Nodal Officer of Reliance Jio has proved the Customer Application Form for mobile no. 8076205534; and **PW18/Kamal Kumar**, Nodal Officer of Reliance Jio has proved the Customer Application Form for mobile no. 8700172544.

13. **PW4/HC Vijender Kumar** has deposed about handing over the CCTV footage of 26.08.2017 of two CCTV cameras, one installed near galley of Court No. 336 and other near Juice Shop, Central Hall of 3rd floor. **PW5/ACP Ranbir Singh** has deposed about receiving the sealed envelope from the office of Ld. District & Sessions Judge (HQ). **PW9/Ashok Kumar**, Ld. MM has deposed about recording of the Statement of witness **Sh. Gaurav Sharma**.

14. **PW14/Gaurav Sharma** deposed about mobile no. 9910043160 being issued in his name and the same being used by his father Sh. Dayanand Sharma. His statement was recorded u/s 161 Cr.P.C and is Ex.PW14/A.



15. PW10/Raj Kumar Pankaj, Branch Manager Andhra Bank has proved the Account Opening Form for Bank Account in the name of Sh. Ramesh Kumar. **PW11/Rajinder Prasad Gautam**, was the ACP to whom the FIR was marked by the SHO PS Sabzi Mandi and he has deposed about calling the panch witness and seizing the envelop and sealing it under the seal of GNT. Envelope containing currency was Mark-A and other contents were Mark-B. Endorsement for registration of FIR is Ex.PW11/A.

16. PW15/Smt. Kusum w/o Sh. Ramesh Kumar has deposed about mobile no. 9210986901 being issued in her name and has deposed that she used to talk to one Geeta on mobile no. 9871159076 and denied any conversation by her son Mukul Kumar with Sh. Tara Dutt using her mobile number. Her statement was recorded u/s 161 Cr.P.C and is Ex.PW15/A.

17. PW16/Ms. Shobha proved the attendance register, Ex. PW16/A, in regard to attendance of Gaurav Sharma on 26.08.2017. **PW19/HC Vishnu Dev** has deposed about providing one DVD containing CCTV footage dated 26.08.2017 & has identified the same Ex.PW19/B along with Section 65B certificate Ex.PW19/A. **PW20/Rajinder Singh Yadav** has deposed about Application for preservation of CCTV footage dated 26.08.2017. The Notesheet is Ex.PW20/A (Colly.) and the Application is PW20/B. **PW21/HC Harender** has proved the entry in Register no. 19 of 2017, Ex.PW21/A about depositing the case property in the Maalkhana.

18. PW3/HC Surender Kumar, Naib Court was the main witness who deposed that between 12:00 and 1:00 p.m., a man identifying himself as ASI Tara Dutt arrived at the courtroom, claiming he was sent by a person named Dayanand Sharma, referring to him as an 'X' Magistrate, to meet the Judge. The Complainant denied knowing such a person and asked for further



enquiry. Later, ASI Tara Dutt confirmed over a phone call that Dayanand Sharma had directed him. He returned with a visiting card of Dayanand Sharma and said he had a sealed envelope for the Judge, claiming it contained documents that the Judge would understand. Surender Kumar photocopied the card, noted Tara Dutt's mobile number, accepted the envelope, and Tara Dutt left. At around 4:15 p.m., Surender Kumar gave the envelope and the photocopy of the visiting card to the Judge. On the Judge's instructions, he opened the sealed envelope and found a photocopy of an Interview Letter for a candidate named Mukul Kumar, with Rs.50,000 in Rs.2,000 currency notes wrapped inside. He recorded the serial numbers of the Notes and photocopied the document. The cash and documents along with the Complaint drafted by Ld. Judge was then submitted to Police Station Sabzi Mandi.

19. PW12/Sh. Chander Shekhar, the Complainant has deposed that he was a member of the Recruitment Committee for recruitment of Orderlies at the time of incident. He deposed that he asked HC Surender to open the envelope and upon discovering the contents of the envelope he reported the matter to Ld. District & Sessions Judge for appropriate action. Thereafter, he has deposed that before writing his Complaint, Ex.PW12/A. HC Surender noted the serial numbers of the currency notes. He has deposed that he wrote an Application to the Ld. District & Sessions Judge for preservation of the CCTV footage of area nearby court 336 which is Mark PW12/B and reply to the same is Ex.PW12/C. During his cross-examination he has deposed that he did not personally know Dayanand Sharma and that nobody approached him for helping Mukul Kumar before that incident.



20. PW8 SI G.N. Tiwari deposed that he produced one envelope containing a Complaint, an Interview Letter and 25 currency notes, before ACP Rajinder Prasad Gautam in the presence of Panch Witness.

21. PW6 Rahul Kumar, was the *panch witness* and deposed that he verified the serial numbers of the Currency Notes, which along with the Interview letter was seized by ACP Rajinder Prasad Gautam *vide* seizure Memo Ex.PW3/A. He identified the signatures on envelope containing the currency notes. The currency notes are Ex.PW6/Article-1 (Colly.), Envelope is Ex.PW6/Article-2, Interview Letter is Ex.PW6/Article-3, and Visiting Card of Dayanand Sharma is Ex.PW6/Article-4.

22. PW13 Sh. Ram Mehar Singh has deposed that the main Chargesheet was filed by earlier IO ACP Rajinder Prasad Gautam. He deposed that he had collected FSL result.

23. The statements of the Appellants were recorded under **Section 313 Cr.P.C**, wherein they denied the incriminating evidence put to them and claimed they had been falsely implicated in this case.

24. The *Appellant Tara Dutt* took the defence that HC Surender Kumar had worked in the Security Branch, Delhi Police, and was known to him. He further claimed that he had matrimonial issues with his wife, in which HC Surender Kumar had intervened and had taken his wife's side. He claimed HC Surender Kumar held a grudge against him and had gotten him falsely implicated in the present case.

25. In support of their defence, five defence witnesses were examined by the Appellants.

26. DW1/ASI Anil Kumar produced a copy of an RTI Application dated 22.11.2018 and its Reply Ex.DW1/1. **DW2/SI Rameshwar Dayal** produced



the complete Biodata of ASI Tara Dutt. **DW3/Veer Singh** produced the file pertaining to the case of *Saroj Mangaoi vs. Tara Mangaoi* Misc. P. No.117/3/2008, which was decided on 18.05.2009. **DW4/Harish Chand Sharma**, son-in-law of Tara Dutt, corroborated the defence of Tara Dutt that HC Surender Kumar had assisted Tara Dutt's wife in their matrimonial dispute and had referred them to Advocate Sanjay Gahlot.

27. DW5/HC Arun Kumar Chauhan produced the Biodata and posting details of ASI Tara Dutt, which were Ex.DW5/A.

28. The learned Special Judge, on the appreciation of the Prosecution evidence and consideration of the defence of the Appellants, came to the conclusion that all the three Appellants abetted learned ASJ, a public servant, to accept Rs. 50,000/- to favour Mukul Kumar in the interview for Peons and thereby, were held guilty of the offence **under Section 12 PC Act and 120B IPC**. They were consequently, sentenced as under:

Appellant	Section 120B IPC	Section 12 PC Act
Tara Dutt	3 years RI + Rs. 30,000 fine (default: 1 month SI)	3 years RI + Rs. 50,000 fine (default: 1 month SI)
Mukul Kumar	3 years RI + Rs. 5,000 fine (default: 1 month SI)	3 years RI + Rs. 15,000 fine (default: 1 month SI)
Ramesh Kumar	3 years RI + Rs. 5,000 fine (default: 1 month SI)	3 years RI + Rs. 15,000 fine (default: 1 month SI)

29. All the sentences were directed to run concurrently.

30. *Aggrieved by the conviction and the sentence, the two Appeals have been preferred by the three Appellants.*

31. *The grounds of challenge* are that the impugned Judgment and Order on Sentence *are illegal, arbitrary, and against the law and facts on record.*



It is argued that while relying on the telephonic conversation between ASI Tara Dutt and Dayanand Sharma, the learned Judge overlooked that it was for the Prosecution to prove that Mobile No. 9871159076 was in the exclusive possession of Appellant, Tara Dutt. It has not been appreciated that Saroj Mangaoi and Geeta, are one and the same person. No question was put to Tara Dutt in respect of Geeta or that the said Mobile number was being used by him.

32. It is further contended that the *Prosecution had a paramount duty to prove the motive* with which the envelope was allegedly handed over to the learned ASJ. The learned Special Judge has wrongly presumed the *motive* based on the improved and confronted portion of HC Surender Kumar's testimony. The Appellant's defence regarding HC Surender Kumar's motive to falsely implicate him due to his sympathy with the Appellant's wife, has been brushed aside based on presumptions and surmises. It is further contended that the testimony of PW3 HC Surender needed closer scrutiny for which his specimen handwriting ought to have been taken by the Investigating Agency to find out if the word "*Secret*" on the envelope was written by him or not.

33. It is further contended that there are *material contradictions in the testimony of the witnesses* which the learned Judge has discarded; instead has drawn conclusions from his personal observations. It is argued that such personal observations cannot substitute evidence, as held by the Supreme Court in Pritam Singh & Ors. vs. State of Punjab MANU/SC/119/1995.

34. The Chairperson, Central Administrative Tribunal while deciding O.A. No.1114/2018 filed by the Appellant, had observed in the Judgment dated 17.06.2021 that *it was not a case where the Applicant himself entered*



*the Chamber of learned ASJ to hand over the envelope containing the currency notes, which was admittedly handed over by HC Surender. In all fairness, HC Surender should have been made an accused particularly when he was not an employee of the Court. The observations of the learned Chairperson, Central Administrative Tribunal has not been considered in the final Judgment. **The personal grudge of HC Surender against Tara Dutt, has also not been appreciated.***

35. Furthermore, PW11 Rajender Prasad Gautam, ACP (Retired) has *admitted* in his cross-examination that he had been directed by the Court to procure CCTV footage during the trial of the case. The documents had not been supplied to the Appellant at the time of commencement of trial, which is a part of fair trial that has been denied to him. It has also been *incorrectly observed that the Reply of RTI Application is not substantive piece of evidence*; even though this Court in M.L. Meena vs. State (CBI) in CrI. M.C No.1331/2015 dated 07.04.2015 had directed the Trial Court to consider information received under RTI Act, even at the stage of Charge.

36. The Appellant has further contended that the cross-examination of PW17 Pankaj Sharma and PW18 Kamal wherein they have admitted that they were not aware about the specifications of the Computer used in retrieval of data and that the Certification under 65-B Indian Evidence Act had not been drafted by them, has not been considered in the Judgment. Instead of discarding the CDR records of Appellant Ramesh Kumar and Gaurav Sharma for want of compliance of 65-B Certificate, reliance has been wrongly placed on the Call Detail Reports, which were inadmissible in law. In support of these assertions, reliance has been placed on Ashwini vs.



State in Crl. Appeal No.323/2018 decided on 08.10.2018 by this Court and on Anvar P.V. vs. P.K. Basheer, (2014) 10 SCC 473.

37. It is further contended that the electronic evidence is only corroborative in nature and in the absence of substantive evidence, it is of no use. Moreover, this CDR record had not been put to the Appellant in his Statement under Section 313 Cr.P.C.

38. The Appellants Mukul Kumar and Ramesh Kumar in their Appeal No.319/2021 have raised similar grounds, to challenge the impugned Judgment.

39. It is contended that there was ***no motive for Tara Dutt to commit the alleged act*** and he should have been given the benefit of doubt, for which reference is made to C.K. Damodaran Nair vs. Govt. of India (1997) 9 SCC 477. There is no reason for Tara Dutt to have attempted to deliver the bribe inside the Court premises to the learned Judge and put his own career at risk by openly delivering the bribe inside the Courtroom. It is illogical that he would knowingly commit such an offence in front of CCTV cameras. It is also suspect as to why learned ASJ Chandra Shekhar did not directly confront the Appellant Tara Dutt, instead of only speaking to his Naib Court HC Surender Kumar. Reliance has been placed on Sujit Biswas vs. State of Assam (2013) 12 SCC 406, wherein it was observed that if the evidence does not conclusively prove the guilt, the accused must be given benefit of doubt.

40. It is further contended that ***there is no proof of conspiracy*** under Section 120B IPC, which is required to be proved with clear evidence. In the absence of any evidence by way of call records or meetings, *there can be no inference of there being meeting of minds* or of the Appellants conspiring to



draw the bribery plan. Reference has been made to State of Tamil Nadu vs. Nalini (1999) 5 SCC 253.

41. Furthermore, the *RTI replies have been wrongly rejected* in contravention of the law laid down by the Supreme Court in the case of M.L. Meena vs. State (CBI) (2015) Delhi High Court and Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal (2020) 7 SCC 1.

42. Furthermore, no fingerprints from the Envelope or any direct evidence was collected. There is no allegation of Tara Dutt benefiting personally by giving this alleged bribe. In the case of C.K. Damodaran Nair vs. Govt. of India (1997) 9 SCC 477 it was held that if the accused has no power to influence the decision, Section 7 P.C. Act, would not apply.

43. The Prosecution has not been able to connect all the dots and there are missing links in the evidence and alternative hypotheses is available to discredit the testimony of the prosecution witnesses.

44. In the case of Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116 it had been held that where the case is based on circumstantial evidence, it must form an unbroken chain leading to irresistible conclusion of the guilt of the accused..

45. *It is, therefore, argued that the Prosecution had miserably failed to prove its case and the Appellant is entitled to be acquitted.*

Submissions heard and Record perused.

I. BACKDROP:

46. The offence alleged against the Appellants is under Section 12 of the Prevention of Corruption Act, read in conjunction with Section 120B of the IPC.



47. This case presents another instance of corruption, an ill that is so deeply embedded within our system that it fosters a general perception that anything can be bought with money. Although the Nation achieved independence from foreign rule on 15.08.1947, it has regrettably failed to liberate itself from the deeply set and pervasive tentacles of corruption.

48. In an endeavour to create comprehensive legislation addressing corruption among public servants, Chapter IX of the IPC, 1860???? (specifically Sections 161 to 165A), which previously dealt with this offence, was deleted and reconstituted as a separate statute, namely the *Prevention of Corruption Act, 1948*. Notwithstanding this comprehensive legislation and efforts at strict implementation, corruption persists, much like the giant Sursa, refusing to diminish its wrath and consistently expanding its demands.

49. In the case of Niranjan Hemchandra Sashittal vs. State of Maharashtra, (2013) 4 SCC 642, it was succinctly stated as under: -

“It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of the nation, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality.”

Irrespective of their status or position, corrupt public servants are corruptors of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation



and inquiry equally. No distinction can be made between public servants against who there are allegations amounting to an offence under the PC Act, 1988 is made.”

50. The Constitution Bench in the case of Subramanian Swamy vs. CBI, (2014) 8 CC 682, also lamented the widespread corruption in society.

51. Corruption is so frequent and rampant, infesting all avenues of Government service and officials high and low, and so entrenched and accepted is the practice of giving and accepting money, that only a few cases are ever reported. This situation was aptly described in Kautilya's *Arthasastra* by R. Shamasastri, 2nd Edn., p. 77, as cited in Neera Yadav vs. Central Bureau of Investigation, (2017) 8 SCC 757, in the following terms:-

“Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least, a bit of the King's revenue. Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out (while) taking money (for themselves).

It is possible to mark the movements of birds flying high up in the sky; but not so is it possible to ascertain the movement of government servants of hidden purpose.”

52. Against the backdrop of these observations, the case of the Prosecution may now be examined. The prosecution's case is that the Appellants, namely Tara Dutt, Mukul Kumar, Ramesh Kumar, and Dayanand Sharma (since deceased), entered into a conspiracy to commit the illegal act of abetting a public servant, the Complainant Sh. Chander Shekhar, the then ASJ, to accept Rs. 50,000/- as an undue advantage for the abuse of his official position, and the Appellants allegedly committed the



offence punishable under *Section 12 of the PC Act read with Section 120-B of the IPC*.

II. OFFENCE OF CRIMINAL CONSPIRACY (SECTION 120B IPC):

53. The Appellants were convicted by the learned Special Judge for the offence under **Section 12 of the Prevention of Corruption Act (PC Act) read with Section 120B of the IPC**. The case, therefore, requires an examination of the legal ingredients for both Criminal Conspiracy and Abetment of a corruption offence under the relevant unamended laws.

a) Legal Framework:

i) Section 120B:

54. Criminal conspiracy, as defined under Section 120A and punished under Section 120B of the Indian Penal Code (IPC), is a distinct and substantive offence. Criminal conspiracy is an **independent and separately punishable offence**. The crime is complete with the **agreement itself**, and no overt act is necessary for a conviction under Section 120B IPC.

55. The foundation of a criminal conspiracy is the **agreement** between two or more persons. It is the “meeting of minds” to achieve a common illegal objective. While a criminal thought alone is not punishable, the moment it is shared and agreed upon by another, it transitions into a criminal conspiracy. The offence is complete as soon as the agreement is made.

56. The ingredients of criminal conspiracy are:

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



57. Crucially, the *law does not require any overt act to be committed* in furtherance of the conspiracy to establish guilt under Section 120B. The unlawful agreement itself constitutes the crime. As has been reiterated by the Apex Court in Ajay Aggarwal v. Union of India, (1993) 3 SCC 609, the conspiracy is a continuing offence that begins with the formation of the agreement and lasts until the objective is achieved or abandoned.

58. By its very nature, conspiracy is hatched in secret and executed in darkness. It is extremely rare for the prosecution to have access to direct evidence of the unlawful agreement. Recognizing this, the courts have consistently held that a conspiracy can be, and often must be, proven by **circumstantial evidence**.

59. As affirmed by the Apex Court in cases like State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 and Sudhir Shantilal Mehta v. CBI, 2009 INSC 1421, Courts must infer the existence of a conspiracy from the surrounding circumstances and the conduct of the accused. A coordinated series of acts by different individuals can lead to a legitimate inference that they were acting in pursuance of a common plan.

60. The evidence must establish an unbroken chain of events that points irresistibly to the existence of a conspiracy. Mere suspicion, or the fact that some accused knew each other, is insufficient.

ii) Doctrine of Agency under Section 10 of the Indian Evidence Act):

61. Once the prosecution establishes reasonable grounds to believe that a conspiracy exists, Section 10 of the Indian Evidence Act is triggered. This introduces the “*doctrine of agency*,” which holds that each conspirator is an agent of the others, in the execution of the common plan.



62. Under this doctrine, *anything said, done, or written by any one of the conspirators in reference to their common intention becomes a relevant fact against all the other conspirators*. It is not necessary for every conspirator to have been involved from the start or to know all the other members or details of the plan. Once a conspiracy is established, every member is liable for the acts of their co-conspirators done in furtherance of the common goal. This principle makes every member jointly responsible for the acts of their co-conspirators that are incidental to the original purpose.

b) Evidence & Analysis:

63. In this backdrop, the *facts of the present case may be considered* to ascertain if there was a conspiracy, i.e. an *agreement between the parties* to achieve the *illegal object*, which was to **pay a Bribe** to influence Mr. Chandra Shekhar, the then ASJ, who was the member of Selection Committee interviewing candidates for the post of Peon in Delhi District Courts, to get favour for Mukul Kumar, who was a candidate to be interviewed by the Committee on 27.08.2017 for the post of Peon in Delhi District Courts.

64. The *case of the Prosecution is that* co-conspirator **Mukul Kumar**, who was a candidate for an interview for the post of Peon before the learned ASJ, had conspired with his father, **Ramesh** who paid Rs. 50,000/- to **Tara Dutt** to be given to the Ld. ASJ with the reference of **Dayanand Sharma** (since deceased), to get a favour for himself in the Interview. Criminal conspiracy between these four Appellants, was to give bribe to the then ASJ who was the member of the Selection Committee.



65. To determine if in fact there was *any such conspiracy*, it may be pertinent to consider the evidence against each of the co-conspirator.

➤ **Accused/Mukul Kumar:**

66. The primary evidence against Mukul Kumar was, *firstly*, the recovery of a photocopy of his Interview Letter from a packet delivered to the learned ASJ. PW-12, the Complainant Sh. Chander Shekar, testified to finding the packet in his Court Chamber, which Appellant Tara Dutt had left through his Naib Court, PW-3/HC Surender Kumar. The Complainant had PW-3 open the envelope, which was found to contain Rs. 50,000/- in addition to the copy of the Interview Letter, Ex.PW-22/C. The testimony of PW12 is fully corroborated by PW-3 HC Surender Kumar.

67. The recovery of this Interview Letter, Ex.PW-22/C, from the packet delivered to the Complainant was further corroborated by the *Panch witness*, PW-6 Rahul Kumar. He deposed that he was called by the I.O. to be a witness to the packet's opening and the recovery of its contents, by the I.O. in the Police Station. He also **produced identified** a copy of Mukul Kumar's retained Admit Card, bearing the Invigilator's original signatures, which was exhibited as Ex.PW-22/D.

68. This Letter was also proven by PW-22/Sh. Sachin JJA, Recruitment Cell, Tis Hazari Courts, Delhi. He produced a copy of this Appellant/ Mukul Kumar's Application Form for the post of Peon and the Admit Card Ex.PW-22/B, for the Written Examination held on 11.06.2017. The copy of the Interview Letter for the interview to be held on 27.08.2017 is Ex.PW-22/C, which is identical to the Interview Letter recovered from the packet delivered to the Complainant.



69. The testimony of the aforementioned witnesses, proves the recovery of the Interview Letter Ex.6/A (Article 3) from the packet along with the money. This establishes that the Appellant, Mukul Kumar, was scheduled to appear in an interview on 27.08.2017, for which the Complainant was a member of the Interview Board.

70. However, the pertinent fact to be proven was that Mukul Kumar, as part of a conspiracy to gain favour in his interview, had approached Tara Dutt or provided him with a copy of the Interview Card and/or the money to influence the Complainant. However, apart from the recovery of this Interview Letter, there is no other cogent evidence linking the Appellant, Mukul Kumar, to the commission of the offence. No evidence whatsoever was led to demonstrate any “*meeting of the mind*” between him and the co-appellants.

71. The *second piece of evidence* against Mukul Kumar, is the telephonic conversations between him and Tara Dutt, which took place between 19.08.2017 and 26.08.2017. On the alleged date of the incident, 26.08.2017, the calls between them took place from 11:27 p.m. until 11:54 p.m. Before that, three calls were made on the 19th, 20th, and 21st of August, 2017. Considering that the Appellant/Mukul Kumar was a neighbour of Tara Dutt and, according to the Prosecution itself, was otherwise known to him, they might have had telephonic conversations. However, in the absence of the contents of these calls, there is nothing to suggest these conversations concerned the alleged conspiracy to bribe the Complainant.

72. The *third piece of evidence* is that he led to Tara Dutt’s apprehension; however, Tara Dutt’s identity was already known to the Police. Merely because Tara Dutt was called to Mukul Kumar’s house on 27.08.2017, from



where he was arrested, is of little consequence in proving a conspiracy inter se them.

73. The *fourth piece of evidence* sought to connect the Appellant, Mukul Kumar to the conspiracy, was the assertion that the hand-writing on the packet belonged to him. However, the FSL Report Ex.PW-13/A, dated 31.01.2018, stated that after examining the hand-writing samples, it could not provide any conclusive opinion.

74. It therefore, emerges from the evidence of the prosecution that there is no evidence on record to establish that he ever approached Tara Dutt or handed over the money to him. The only incriminating evidence is the recovery of the Interview Letter from the packet. It would be highly speculative and conjectural to hold that he gave this Interview Letter to Tara Dutt and to hold this evidence sufficient to conclude he was a participant in the conspiracy.

75. The only other evidence consists of a few phone calls between him and the Co-Appellant/Tara Dutt; but lacking the conversations' contents and considering they were neighbours, no conclusion regarding his complicity can be drawn against him.

76. The Prosecution has miserably failed to prove that Mukul Kumar, even though was a candidate who had to appear for the interview, participated in any manner in a conspiracy to influence the Complainant by having the Interview Letter and Rs. 50,000/- conveyed to the Ld. ASJ through Tara Dutt.

77. The Appellant/Mukul Kumar is, therefore, entitled to the benefit of the doubt and to be acquitted.

➤ **Appellant Ramesh Kumar, father of Mukul Kumar:**



78. The second individual linked to this alleged conspiracy was Ramesh Kumar, the father of Mukul Kumar. The Prosecution contended that he had arranged Rs. 50,000/- and paid it to Tara Dutt to be delivered to the Complainant. To substantiate his role, the only witness examined was PW-10/Raj Kumar Pankaj, Branch Manager, Andhra Bank, who produced the Bank Statement of Ramesh Kumar's Account, Ex.PW 10/A. This statement reflects a withdrawal of Rs. 20,000/- on 23.08.2017. However, besides this withdrawal, there is no other incriminating evidence against him.

79. Furthermore, there is a complete lack of explanation as to how the alleged balance of Rs. 30,000/- was arranged by him, and from whom and in what manner the money was handed over to Tara Dutt for onward transmission, as part of the conspiracy. The mere fact that he is the father of the candidate, or that he withdrew Rs. 20,000/- three days prior to the alleged incident, cannot be considered sufficient to prove his involvement in the conspiracy. There is also no evidence whatsoever against Ramesh Kumar to demonstrate that he gave the money to Tara Dutt or that the money recovered was the same that he had withdrawn from the Bank.

80. ***Therefore, the Prosecution has miserably failed to establish any cogent evidence against Ramesh Kumar as a participant in the conspiracy, who is entitled to be acquitted.***

➤ **Dayanand Sharma (since deceased):**

81. The third link, Sh. Dayanand Sharma, had died during the trial and the proceedings stood abated against him.

82. However, to appreciate the links in the conspiracy, it may be observed that the only role assigned to Dayanand Sharma was that he knew Mr. Chander Shakhar, the Complainant, and it was with his reference that Tara



Dutt had gone to meet the Complainant. The only evidence to corroborate this aspect is the *photocopy of his Visiting Card* which was handed over by Tara Dutt to PW-3/HC Surender Kumar, along with the packet which was handed over to the Complainant. This Visiting Card was also recovered from the pocket of the co-Accused/Tara Dutt, when he was arrested.

83. The recovery of the *Visiting Card* has to be seen in the context of them being distantly related, Daya Nand being his “Chachia Sasur”. Further, merely because a Visiting Card was recovered, cannot be held to prove that Sh. Dayanand Sharma in any way played any role in Tara Dutt approaching the Complainant. Mere recovery of a copy of the Visiting Card along with the packet delivered to the Complainant by Tara Dutt, cannot be considered as incriminating evidence against Dayanand Sharma, especially when there is no other substantive evidence against him. Also, there is no evidence that Dayanand Sharma had talked to the Complainant or had in any way conspired in the attempt to bribe the Complainant.

84. The other relevant piece of evidence relied upon by the prosecution was the CDR calls between the Appellants. PW-3/HC Surender Kumar had deposed that in his presence, Tara Dutt made a call to Daya Nand to confirm if he had to meet the ASJ, and after the call, he re-affirmed that he had to meet him only. However, again as per the testimony of HC Surender Kumar, Tara Dutt had moved a little distance and he himself did not hear the conversation and only was so told by Tara Dutt. There may be some evidence deducible from CDR that a call was made to Daya Nand, but in the absence of any proof of the actual contents, it cannot be held that the complicity of Daya Nand Sharma was established, in any manner.



85. In the case of R. Venkatakrisnan v. CBI, (2009) 11 SCC 737 the Apex Court has explained that *while arriving at a finding as to whether the said offence has been committed or not, Court may take into consideration the circumstantial evidence. While however, doing so, it must bear in mind that meeting of the minds is essential; mere knowledge or discussion would not be sufficient to bring home the offence.*

86. To conclude, even if it is held that Tara Dutt approached the Complainant with the reference of Daya Nand, there is nothing further to show that he was a party in the conspiracy of giving bribe to him. The best case that has been established is that Tara Dutt went to meet the Complainant with the reference of Dayanand, but it nowhere reflects the meeting of mind and complicity of Daya Nand in the entire conspiracy. The prosecution has miserably failed to prove this link in the chain of conspiracy.

87. In the facts and circumstances as has been discussed, there may have been a motive to get favour in the Interview, but neither any meeting of mind has been proved nor any Agreement between them and Tara Dutt, to connive in this act of bribery. Dayanand died during the trial and no involvement of his has been established. The lone Appellant **Tara Dutt**, cannot be held liable for the offence of conspiracy under S.120B IPC, which requires at least two persons.

88. *The prosecution has miserably failed to establish any conspiracy between Tara Dutt with the co-accused persons. Thus, the conviction under Section 120B IPC against the Appellants is not sustainable and they are entitled to be acquitted.*

III. Offence Of Abetment Under the Prevention of Corruption Act:



89. The Appellants were charged under Section 12 of the PC Act. As the alleged incident occurred on 26.08.2017, the unamended (pre-2018 amendment) version of the provision is applicable.

The Definition of “Abetment”:

90. While Section 12 PC Act penalizes the act of abetment, the term itself is not defined in the statute. Consequently, its legal meaning is derived from Section 107 of the Indian Penal Code, 1860 (IPC).

91. **Section 107, IPC defines the same and is provided as under:**

“A person abets the doing of a thing, who -

First - *Instigates any person to do that thing; or*

Secondly - *Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*

Thirdly - *Intentionally aids, by any act or illegal omission, the doing of that thing.”*

92. According to Section 107, a person is said to abet the doing of a thing if they act in one of three ways:

- **‘Instigation’:** A person abets by instigation if they actively suggest, encourage, or incite another person to commit an offence. The Supreme Court, in Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 has clarified that to ***‘instigate’ means to goad, urge, provoke, incite, or encourage the commission of an act.*** This does not require the use of direct or explicit words; instigation can be inferred from conduct and the surrounding circumstances.
- **‘Conspiracy’:** A person abets by engaging with one or more individuals in a conspiracy to commit an offence. This requires an



agreement to commit the crime, followed by an act or illegal omission in pursuance of that agreement.

- **‘Intentional Aiding’:** A person abets by intentionally aiding the commission of an offence. This can be done through an act or an illegal omission.

93. Explanation 2 to Section 107 clarifies that a person “*aids*” the doing of an act if, either before or at the time of the act's commission, they do something to facilitate it.

94. The Kerala High Court in N.A. Abdul Rahiman vs. State of Kerala, 2015 SCC OnLine Kerala, while considering similar facts, observed that the definition of abetment under Section 107 IPC shows that to constitute the abetment as defined under the law, *there must be some nexus between the acts of the alleged abettor and the offence abetted*. It held as under:

“7. Section 12 of the Prevention of Corruption Act provides that whoever abets any offence punishable under Section 7 or Section 11, 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 fine. The Prevention of Corruption Act does not specifically define abetment meant under Section 12. So we will have to apply the definition of abetment under the Indian Penal Code. To constitute abatement of an offence there must be some instigation to do an act of offence, or the alleged abettor must have intentionally aided or facilitated the commission of a crime, or the alleged abettor must have engaged in some conspiracy with one or more other person or persons for the commission of an offence. Thus the definition of abetment under Section 107 IPC shows that to constitute the abetment as defined under the law, there



must be some nexus between the acts of the alleged abettor and the act of offence abetted.”

95. In this regard, reference may also be made to the judgment of Bombay High Court in Kishor Khachand Wadhwani vs. The State of Maharashtra, decided on 26.07.2019 wherein it was observed as under:

“The PC Act, 1988 does not define as to what the term ‘abetment’ means and conveys for the purpose of Section 12 of the PC Act. Therefore, we will have to fall back to Section 107 of the IPC. Perusal of Section 107 of the IPC would reveal that to constitute abetment of an offence there must be some instigation to do an act, which would amount to an offence or the alleged abettor must have intentionally aided or facilitated the commission of a crime, or the alleged abettor must have engaged in some conspiracy with one or more other person or persons for the commission of an offence. It thus contemplates existence of some nexus between the acts of the alleged abettor and the act of offence abetted.”

96. In essence, abetment is the act of promoting, supporting, or facilitating the commission of a crime. In the context of the PC Act, it criminalizes any action that encourages or helps in the offering or acceptance of a bribe.

97. At this point, it would also be relevant to refer to S.20 PC Act which deals with presumptions.

a) Legal Framework: Bridging the IPC and the Prevention of Corruption Act:

98. In the present case, as has been discussed above, no conspiracy was established amongst the Appellants. Likewise, the prosecution case is not of



aiding. What needs to be considered is whether the Appellant Tara Dutt committed by *instigating the complainant to accept the Bribe*.

99. To fully comprehend the scope of abetment under Section 12 of the Prevention of Corruption Act, 1988, it is essential to examine its legislative history and its direct lineage from the Indian Penal Code, 1860 (IPC).

100. Prior to 1988, the primary provisions dealing with bribery and corruption by public servants were housed in **Sections 161 to 165A of the IPC**. The Prevention of Corruption Act, 1988, was enacted as a consolidating Statute to strengthen and unify the legal framework for combating corruption.

101. The **Statement of Objects and Reasons** of the 1988 Act explicitly clarified this transition, stating that the provisions of Sections 161 to 165A of the IPC were being incorporated into the new Act. Consequently, upon the enactment of the PC Act, these corresponding sections were deleted from the IPC. The offence of abetting a public servant to accept a bribe was previously punished under **Section 165A of the IPC**. When this provision was incorporated into the new legislation as **Section 12 of the PC Act**, its core language and legal concept remained virtually identical.

102. Section 165A, IPC (Omitted): “*Whoever abets any offence punishable under Section 161 or Section 165, whether or not that offence is committed in consequence of the abetment, shall be punished...*”

103. Section 12 Prevention of Corruption Act, 1988 (pre-2018 Amendment) reads as under:

“12. Punishment for abetment of offences defined in section 7, 11, 13 and 14 –



Whoever abets any offence punishable under section 7 or section 11 or section 13 or section 14 of 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, six months but which may extend to five years and shall also be liable to fine.”

104. Post-2018 amendment (w.e.f. 26.07.2018, as amended by the Act 16 of 2018), it read as:

“12. Punishment for abetment of offences – 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 fine.”

105. The amendment expanded scope of S.12 as was made applicable to all the offences under the Act with enhanced penalties, while the unamended S.12 was in relation to **7, 11, 13 and 14 PC Act**, but the core idea of **abetment** remains the same.

106. A plain reading of this section reveals that the *commission of the primary offence* as provided under S.7 PC Act is not a prerequisite for establishing guilt for abetment. The phrase “*whether or not that offence is committed in consequence of that abetment*” makes it clear that the act of abetment is itself a substantive offence.

107. This parallel structure demonstrates a clear legislative intent to carry forward the established legal principles. The phrase “*whether or not that offence is committed*” was retained, underscoring that the legal understanding of the offence was not altered, but only its statutory location was.



108. Given that Section 12 of the PC Act is a direct successor to Section 165A of the IPC, the substantial body of case law delivered by the Apex Court interpreting Section 165A remain a vital and authoritative guide. These judgments provide crucial insights into how the highest court has treated the act of offering a bribe, thereby informing the correct interpretation of Section 12 of the PC Act, today.

109. While interpreting Section 165A of IPC, the Supreme Court in the case of Mohandas Lalwani vs. State of Madhya Pradesh, 1973 SCC OnLine SC 274, was confronted with the question of whether Section 165A IPC is made out in the circumstances that the accused had taken out an envelope from the left pocket of his trousers and put on the table before the Complainant, with an intent to get favour in the Tender for which he had applied in the Department, who immediately called his Personal Assistant, on which accused kept the money back in his trousers. It was held that this tender of money to the Complainant with an intent to get a favourable decision in the matter of the acceptance of tender, though was not accepted by the Complainant, is enough to bring home the offence under Section 165A IPC and consequently, the conviction was upheld.

110. In the case of Badri Rai vs. State of Bihar, 1958 SCC OnLine SC 156, the Apex Court again considered the case, money was offered to the Sub-Inspect in a packet wrapped in a piece of old newspaper, to hush the criminal case against him. But, the Sub-Inspector declined to take the money. It was held *that the money had been offered pursuant to the object of conspiracy for quashing of criminal case against the accused by bribing the public servant who was in charge of the investigation of the case, which was sufficient to establish the offence under Section 165A IPC.*



111. Similarly, in the case of Hira Lal vs. State of Haryana, (1970) 3 SCC 977, a simple offer was made for continuing to pay Rs.1,100/- per month for being allowed to indulged in Khaiwali Satta to a Sub-Inspector. *It was held that mere offer with no tender of money, would not be sufficient to constitute the offence under Section 165A IPC.*

112. Likewise, in the case of Bhagwan Singh vs. State of Rajasthan, (1976) 1 SCC 15, the Apex Court again in similar circumstances, the Appellant took out the money to hand over the same to Head Constable to let him go, since he was unable to produce the Permit for transport. However, the money was declined by the Head Constable. It was held that this was sufficient to establish conviction under Section 165A IPC, though on the fact of the case, the Appellant was acquitted.

b) The Legal Question: Is an Unaccepted Offer of a Bribe an Offence?

113. *The core legal issue in this case is whether a mere unsolicited offer of a bribe, which is refused by the public servant, is sufficient to constitute the offence of abetment under Section 12 of the PC Act.*

114. While there was consistent view in this regard in the interpretation of S.165-A IPC, but there has been a notable divergence of opinion on this matter amongst the various High Courts in the interpretation of S.12 PC Act, the precursor to which was S.165A IPC.

• Requirement of Demand or Acceptance:

115. One set of Courts posit that in the absence of a demand for illegal gratification by the public servant, a mere voluntary offer of bribe does not constitute abetment.

116. Kerala High Court in N.A. Abdul Rahiman vs. State of Kerala (2015) opined that a *mere offer of a bribe*, without any money being actually



offered irrespective of demand or acceptance, cannot be punished as abetment. However, the relevant extract is as under:

*“8. In this case the abetment of offence alleged by the prosecution is that the two accused offered bribe to the District Superintendent of Police. A **mere offer of bribe** will not constitute the offence of abetment meant under Section 12 of the Prevention of Corruption Act. **Of course it is well settled that payment of bribe will definitely come under Section 12 of the Prevention of Corruption Act, if such payment of illegal gratification was made as a motive or reward for some favours as meant under Section 7 of the Prevention of Corruption Act***

*9. ...The allegation in the Ext. P1 complaint, and also the evidence given by PW1 in court is that the accused **offered** to give illegal gratification to PW1 for some illegal favours. The very important **question is whether such an offer alone, or a mere offer to give illegal gratification will constitute the offence of abetment punishable under Section 12 of the Prevention of Corruption Act.** ...*

*10. Of course, payment of illegal gratification on demand is punishable as abetment under Section 12 of the Prevention of Corruption Act. But this is not a case involving payment of bribe. The prosecution allegation is that even without any demand, the two accused voluntarily made **an offer** to give illegal gratification. **When there is no such demand there is no question of a prosecution. When there is no acceptance of illegal gratification with the knowledge that it is illegal gratification there is no question of a prosecution under Section 7 of the Prevention of Corruption Act. Mere offer to give illegal gratification without any demand from the public servant cannot be punished as abetment under Section 12 of the Prevention of Corruption Act. If a person gives illegal gratification to a public servant, he will have two options. He can either accept it with the knowledge that it is illegal gratification, or he can reject it and make a complaint against the person who paid it. If it is accepted, the public***



servant, and also the person who made payment will be liable for punishment. The public servant will be liable under Section 7 of the Prevention of Corruption Act, and the person who made payment of bribe will be liable under Section 12 of the Act. But in a case where the illegal gratification is rejected by a public servant, the public servant will have to make a complaint against the person who made payment, and in such a situation, the person who made payment will be liable under Section 12 of the Prevention of Corruption Act. ...”

117. Kerela High Court thus, concluded that *mere offer to give illegal gratification without any demand* from the public servant cannot be punished as abetment under Section 12 of the Prevention of Corruption Act.

118. The Allahabad High Court in Ganesh Sharma vs. State of U.P. 2019 SCC OnLine Allahabad 4284 held that only the payment of illegal gratification *on demand* is punishable as abetment under Section 12. The relevant extract is as under:

“it is clear that for implication of the applicant under Section 12 of Prevention of Corruption Act, the prosecution was required to prove first and foremost that there was some demand of illegal gratification and for fulfilling the same, the applicant went to the chamber of the opposite party No.2 and therefore, the applicant deserves to be tried for offence under Section 12 of Prevention of Corruption Act. Mere offer, if the envelope is taken to be an offer for bribe, will not constitute the offence of abetment within the meaning of Section 12 of Prevention of Corruption Act. Only payment of illegal gratification on demand is punishable as abetment under Section 12 of Prevention of Corruption Act, but in the present case, there is no such allegation. The offer, if it is accepted to be so, on behalf of the applicant being voluntarily made, without demand, would not call for prosecution under Section 7 of Prevention of Corruption Act. ... In the present case also,



the opposite party No.2 did not even touched the envelope and he presumed that the applicant is offering bribe and has lodged the FIR presuming that the envelope contained money for illegal gratification.”

119. In the case of **Bombay High Court** in *Kishor Khachand Wadhwani vs. The State of Maharashtra* decided on 26.07.2019, a complaint was filed by a **Sub-Inspector (SI)**, Mr. Mahendra Janrao, alleging that the Petitioners (*Kishor Khanchand Wadhwani and another person*) **conspired to offer him a bribe** of ₹5,00,000 to obtain original Assignment Deeds related to a trademark dispute he was investigating, and the complaint led to a **trap operation** where the Petitioners were **caught giving Rs. 5,00,000 as a bribe** to the public servant. It was observed that prior to the 2018 amendment, *the mere act of offering a bribe*, was not a substantive offence under the PC Act. The relevant extract is as under:

*“... Prior to the amendment of 2018, the mere offer of bribe was not constituting an offence and the offence relating to public servants being bribed and offence relating to offering of bribe to public servant came to be introduced on 26.07.2018. Prior to substitution of Sections 7, 8, 9 and 10 of the Act, what was punishable was **an act of public servant accepting gratification** other than legal remuneration in respect of an official act. **The payment of bribe would be covered under Section 12 of the PC Act if such payment of illegal gratification was made as a motive or reward as referred to in Section 7 of the PC Act.** The Act is offering a bribe to a public servant became an offence only w.e.f. 26.07.2018 and commensurating with the introduction of the said provision, Section 12 of the Act is also amended and by the amended provision whoever abets any offence punishable under the Act, whether or not that offence is committed in consequence of that abetment, shall be liable for punishment for abetment of offence. The public*



*servant, who accepts the bribe was liable for penalty under Section 7 of PC Act but now any person, who gives or promises to give an undue advantage to another person or persons, with intention to induce a public servant to perform improperly a public duty, or to reward such public servant for the improper performance of public duty is liable for penalty under Section 8 of the PC Act. **The act of mere offer voluntarily made by the petitioners without any demand from the complainant cannot be made punishable under Section 12 of PC Act since the said Act was not attracting any offence prior to even though the amount has been found on the table of the Complainant in the trap laid.***”

120. This line of reasoning by Kerela High Court, Allahabad High Court and Bombay High Court, essentially held that an attempt to bribe **by giving money**, without a corresponding demand or acceptance, does not constitute the offence of abetment under S.12 PC Act.

- **The Other View Holding that a Mere Offer as a Substantive Offence:**

121. A contrary and more purposive interpretation has been taken by High Courts of *Madhya Pradesh and Madras High Court* which held that the offer of a bribe is in itself, a completed offence of abetment, regardless of whether it is demanded or accepted.

122. The **Madras High Court** in *Ghanshyam Aggarwal vs. The State* in CRL.A (MD) 15/2016 decided on 18.12.2020, after a detailed analysis of the legislative history and disagreeing with the Kerala and Bombay High Courts, held that the offer of a bribe, even without anything more, constitutes a substantive offence under Section 12 of the PC Act. The relevant extract is as under:



“One can safely conclude after a comparison of Section 12 of the Prevention of Corruption Act, 1988 and Section 165 A of IPC that they are almost similar. One can even note that there is completely no difference in the phraseology of the aforesaid provisions. Of course, while Section 12 of the Act prescribes a minimum sentence, Section 165 A of the Penal Code did not. Section 165 A of IPC was considered by the Hon'ble Supreme Court in quite a few cases. Mahadev Dhanappa Gunaki and Ors. vs. The State of Bombay (AIR 1953 SC 179), appears to be one of the earliest. Dr. B.R.Ambedkar was the counsel who unsuccessfully argued for the appellant accused. Badri Rai and Ors. vs. The State of Bihar (AIR 1958 SC 953) is another. In Yusufalli Esmail Nagree vs. The State of Maharashtra (AIR 1968 SC 147), the offer of bribe made by the accused was also tape recorded. When the counsel claimed protection under Article 23 of the Constitution against the use of the statement that was recorded in tape, the Hon'ble Apex Court denied the constitutional protection available under the said Article. Some of the cases arising under Section 165 A of IPC are Hira Lal vs. The State of Haryana (1970)3SCC 933, Kishan Narain vs. State of Maharashtra (1974)3SCC 368, (1974) 3 SCC 361 (Mohandas Lalwani vs. The State of Madhya Pradesh) and (1976) 1 SCC 15 (Bhagwan Singh vs. The State of Rajasthan). Though some of these cases ended in acquittal, the point to note is that the offer of bribe was always treated as a substantive offence under Section 165 A of IPC by the Hon'ble Supreme Court. The Prevention of Corruption Act is an Act to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. Para 4 of the statement of objects and reasons states that the provisions of sections 161 to 165 A are incorporated in the present Act and that was why the corresponding provisions in the Penal Code were to be deleted. This being the legislative history, there is absolutely no merit in the contention of the learned Senior Counsel that offer of bribe would not constitute an offence



under Section 12 of the Prevention of Corruption Act, 1988.

*Shri A. Robison, the learned Government Advocate (crl. Side) drew my attention to a direct decision rendered by the Hon'le Madhya Pradesh High Court in Sharad Kumar vs. State of Madhya Pradesh, 2009 O ILR (MP) 229. **The Hon'ble Madhya Pradesh High Court in its scholarly decision had held that offer of bribe itself is an offence.***

In view of the foregoing discussion, I have to express my respectful disagreement with the views of the Hon'ble Kerala High Court as well as that of the Bombay High Court and I hold that offer of bribe to a public servant even without anything more does constitute a substantive offence punishable under Section 12 of the Prevention of Corruption Act, 1988. This was always the position and the recent amendments have not made any difference."

123. *Madhya Pradesh High Court, in the case of Sharad Kumar vs. The State of M.P., decided on 01.08.2008, considered the question: "Whether the offences under sections 7 and 12 of the Prevention of Corruption Act, 1988 are substantive offences, if yes, being totally independent, the cases falling under it are required to be decided without taking aid of illustration (a) of Section 116 IPC? If yes, whether by taking the aid of Illustration (a) of Section 116 of the Penal Code holding that the offence under Section 12 of the Act is proved, the case of Rajaram v. State of MR, [(2001) 1 MP LJ 624], has been correctly decided?"*

124. *It was observed by Madhya Pradesh High Court that when the bribe is offered to a public servant as a reward for showing some favour in discharge of his official function, even upon refusal of public servant to accept bribe, the person offering bribe, is punishable under this section. The*



language of Section 165-A of Code and that of Section 12 of the Act are identical in nature.

125. Furthermore, while noting that S.107 IPC is applicable to adjudge abetment, guidance was drawn from Section 116 IPC (which had not been deleted on the promulgation of PC Act) which makes abetment an offence even if an offence that is ultimately not committed and specifically Illustration (a) was found to be particularly instructive, which reads thus:

“Section 116: ...

Illustration (a): A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B’s official functions. B refuses to accept the bribe. A is punishable under this section.”

126. Since the definition of abetment is not given in the PC Act, and it has been held in the case of *M.A. Abdul Rehiman* (supra) and *Kishore Wadhwani* (supra), S.107 IPC would be applicable, S.116 which forms the part of Chapter V dealing with Abetment when the abetted offence is not committed and the illustration (a) to Section 116, *would be applicable in full force. It provides that even if the money offered by the Accused is refused by the public servant, it would still constitute an offence of abetment.*

127. It was observed that this illustration (a) to S.116 IPC which remains part of the IPC, provides a clear legislative intent *that a person who offers a bribe, is guilty of abetment even if the public servant refuses it*

128. *This Court concurs with the reasoning of the Madras and Madhya Pradesh High Courts to be in consonance with the sections dealing with abetment and also the Judgements of the Apex Court which, though are*



under S.165A IPC, but are on this very aspect. The legislative intent behind the PC Act was to consolidate and strengthen the laws against corruption. To hold that an offer of a bribe is not an offence unless it is accepted, would defeat the very purpose of the statute. The act of offering a bribe is a pernicious attempt to corrupt a public servant and the moment the offer is made by giving money it is a completed offence of abetment. Needless to emphasize that bribe in tangible form must be offered and *mere oral offer* with no tangible offering, would not constitute an offence of abetment under S.12 PC Act. *It may also be highlighted that the offence of abetment has to be considered from the perspective that it is committed by the person who makes the offer and not the person to whom the offer is made.*

129. Therefore, *the legal position that emerges is that an unsolicited offer of a bribe to a public servant, constitutes the offence of abetment punishable under Section 12* of the PC Act, irrespective of whether there was a prior demand or subsequent acceptance.

c) Evidence and Analysis of Offence of Abetment under S.12 P C Act:

130. It now needs consideration as to whether the conviction of the Appellants under Section 12 of the Prevention of Corruption (PC) Act, for having abetted the commission of the offence of bribery, is sustainable.

131. The *first significant witness* examined by the Prosecution is *PW-3 HC Surender Kumar*, who was posted as a Naib Court in the Court of Sh. Shekhar, learned ASJ, Central District, on 26.08.2017. He deposed that on that day, between 12:00 noon and 01:00 p.m., while he was present in the courtroom, a person introducing himself as ASI Tara Dutt stated that he wanted to meet 'Judge Sahib'. PW-3 inquired from him who had sent him to the Court. He named Magistrate Dayanand Sharma as the person who had



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sent him to meet the Presiding Officer. PW-3 went inside and informed the Presiding Officer/Complainant, who stated that he did not know any Dayanand Sharma and instructed him to inquire if the ASI, in fact, intended to meet someone else. The Presiding Officer thereafter left for lunch and told PW-3 to confirm with whose reference the ASI had come. HC Surender Kumar further deposed that ASI Tara Dutt moved a short distance away and began speaking to someone on his mobile phone. He returned and informed PW-3 that he had called Dayanand Sharma, who confirmed the name of the Judge he was to meet. He then produced a Visiting Card of Dayanand Sharma, 'X' Magistrate, and stated that he had an envelope to deliver to the Judge on the instructions of Dayanand Sharma and that the envelope contained documents, adding '*aur Usme Judge Sahab Ke Kagaj Hai aur Judge Sahab Dekh Kar Usey Samajh jayenge.*' He then asked Tara Dutt to leave Dayanand Sharma's Visiting Card, which he was disinclined to do. Head Constable Surender Kumar obtained a photocopy of the Visiting Card and noted ASI Tara Dutt's mobile phone number on its back. ASI Tara Dutt then handed him a sealed Envelope and left.

132. At approximately 4:15 p.m., he took the Envelope into the Chamber of the Presiding Officer and handed it over, along with the photocopy of Dayanand Sharma's Visiting Card (Ex.PW-3/X), informing him that Tara Dutt had left it for delivery to the Complainant.

133. On the directions of the learned Judge, he opened the sealed envelope (Ex.PW-3/C), which was pasted with glue. Upon opening it, he found it to contain one folded paper, which was a photocopy of the Interview Letter (Ex.PW-3/B) of a candidate, Mukul Kumar, in which currency notes were



wrapped. He counted the currency at the instance of the Complainant and found it to be 25 currency notes, each of Rs. 2,000/- denomination.

134. PW-3/HC Surender Kumar further deposed that, on the learned Judge's directions, he noted down the serial numbers of those currency notes on a paper and made a photocopy of that document. The learned Judge then prepared a Complaint (Ex.PW-12/A). The entry of the receipt of this Complaint by the SHO of Police Station Sabzi Mandi, along with the envelope containing the copy of the roll number and the currency notes, is marked as Ex.PW-5/A.

135. PW-3/HC Surender Kumar also deposed that at about 01:30 a.m. to 02:00 a.m., a Panch witness named Rahul was called to the Police Station. In his presence, the currency notes and the roll number were seized vide Seizure Memo Ex-PW3/A. The Investigating Officer tallied the serial numbers of the currency notes with the list he had prepared in the Chamber. On the learned Judge's directions, they were all kept in separate envelopes and sealed with the seal of 'GNT'.

136. PW-3/HC-Surender Kumar was cross-examined in extenso on behalf of the Appellant, but nothing material could be elicited from his cross-examination.

137. His testimony is fully corroborated by *PW-12/Sh. Chander Shekhar*, the then ASJ, the Complainant to whom the bribe was offered. He deposed that at about 4:15 p.m., Head Constable Surender Kumar had informed him that ASI Tara Dutt had made a call to Dayanand Sharma, who had instructed him to meet the Complainant. The Visiting Card of Dayanand Sharma, along with a sealed envelope, was handed over to him. He had the envelope opened by the Head Constable, and it was found to contain the currency



notes and the copy of Mukul Kumar's Interview Letter. He made the Complaint Ex.PW-5/A (also Ex.12/A), upon which the FIR Ex.PW-1/A was registered. He explained in his cross-examination that Head Constable Surender Kumar had conveyed to him that ASI Tara Dutt was insisting on meeting him after speaking to one Dayanand Sharma on the telephone and had stated that the Head Constable was to hand over the packet only to the Complainant. There is full corroboration of the testimony of Head Constable Surender Kumar with that of the Complainant, PW-12.

138. Another material witness was PW-6/Rahul Kumar, the Panch witness, who also deposed that on 27.08.2017, at about 01:00 a.m., he was called to the Anti-Corruption Branch. In his presence, the Visiting Card of the Special Metropolitan Magistrate, the copy of the Interview Letter and 25 currency notes of Rs. 2,000/- denomination each (with the serial numbers noted) were seized by ACP Rajinder Prasad Gautam vide Seizure Memo Ex.PW-3/A. The currency notes were sealed in a separate packet marked 'A' with the seal of 'GNT'. The seal was handed over to him by ACP Rajinder Prasad Gautam, which he returned to SI G.N. Tiwari on 13.09.2017.

139. The Prosecution evidence, therefore, overwhelmingly proves that Tara Dutt handed over a packet to the Complainant, through Head Constable Surender Kumar, which was found to contain Rs. 50,000/- along with the photocopy of Mukul Kumar's Interview Letter for the interview to be held by the Committee, of which the learned Judge was a member, on the next day. It requires no further elaboration that the money was intended to secure a favour for Mukul Kumar in the interview. Even if it has not been established that such an act was done at the behest of Mukul Kumar or the source from where Tara Dutt procured the money, such factors were



relevant only to establish conspiracy. Here, the prosecution has proven through cogent and unimpeachable evidence, the overt act of offering the bribe money to the learned Judge.

140. There could not have been better corroborative evidence than the recovery of the envelope containing the money.

141. At this stage, another aspect that may be considered is the aspect of “presumption” given under S. 20 PC Act.

- **Presumption Regarding Bribe Offer:**

142. Section 20 of the PC Act establishes a crucial rule of evidence by creating a *legal presumption* against the accused in certain circumstances. This provision is designed to aid the prosecution in corruption cases, where direct evidence of a corrupt motive can be difficult to obtain.

143. Section 20(2) PC Act states:

“S.20 -

...

(2) If it is proved in a trial under Section 12 that any illegal gratification was given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered/attempted to give such illegal gratification as a motive or reward as mentioned under Section 7 PC Act.”

144. Section 20 creates a **rebuttable presumption of law** meaning that once the Prosecution establishes the foundational facts, the court *shall presume* the corrupt motive of the accused, unless the accused provides evidence to the contrary to disprove it. The burden of proof then shifts to the accused to rebut the presumption.

145. The initial burden lies on the prosecution to prove through evidence, that the accused “***gave or offered to give or attempted to give***” any illegal



gratification. This is the essential predicate that must be established before the presumption can be triggered. Once the prosecution successfully proves this foundational fact, the court shall then presume that the accused offered or gave the gratification for the corrupt purpose mentioned in Section 7 of the PC Act - that is, as a **motive or reward** for a public servant to perform their duties improperly or show undue favour.

146. The presumption under Section 20 is limited to the ***motive or purpose*** behind the offer of the bribe. It presumes that the money was offered *for a corrupt reason*.

147. The provision **does not presume the guilt of the accused**. The act of offering the bribe (the *actus reus*) must still be independently proven by the prosecution beyond a reasonable doubt. The presumption cannot be used as a substitute for the initial proof that gratification was offered.

148. The Kerala High Court observed in N.A. Abdul Rahiman vs. State of Kerala, in regards to the presumption under Section 20(2) held thus:

“11. Section 20 of the Prevention of Corruption Act contains some presumptions. Sub section 2 deals with presumption in the case of a prosecution under Section 12 of the Prevention of Corruption Act that where it is proved in any trial of an offence punishable under Section 12 that any illegal gratification was given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give such illegal gratification as a motive or reward as mentioned under Section 7. Thus what is presumed under Sub section 1 to Section 20 of the Prevention of Corruption Act is not guilt of the accused facing prosecution under Section 12. What is presumed is only that illegal gratification was given by the accused or offered by the accused as a motive or reward as meant under Section 10. Presumption is only a rule of evidence,



and the presumption under Section 20(2) of the Prevention of Corruption Act can be applied only where it is proved that any illegal gratification was given or offered to be given. ...”

149. It was thus, held in N.A. Abdul Rahiman (supra) that the presumption under S.20 PC Act “*can be applied only where it is proved that any illegal gratification was given or offered to be given.*”

150. In the instant case, it is proved beyond reasonable doubt that the accused had handed over the envelope containing money, therefore, the presumption is that it was for a motive or reward as meant under S. 10 PC Act.

• ***Other Evidence:***

151. Another argument raised on behalf of Tara Dutt that his handwriting sample was not taken to confirm who had written the word “Secret” on the envelope. This argument is specious; whosoever may have written the word “secret,” the most significant aspect was who delivered the packet, a fact that has been established against Tara Dutt beyond a reasonable doubt.

152. The testimony of the afore-discussed witnesses proves beyond a reasonable doubt that Appellant Tara Dutt offered a bribe in the packet containing money, to the Complainant to get a favour for Mukul Kumar in his selection in the interview scheduled for 28.07.2017.

Conclusion:

153. *Thus, it has been proved beyond reasonable doubt that the offence of Abetment under Section 12 of the PC Act was committed by Tara Dutt who had handed over an envelope containing Rs.50,000/-, with the photocopy of the Interview Letter of one of the co-Appellant, Mukul Kumar*



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with an intent of getting favour from the Complainant in the interview for Mukul Kumar.

154. The Appellant/Tara Dutt has been rightly convicted for the offence under Section 12 of PC Act.

Relief:

155. The **conviction of Tara Dutt is upheld under S.12 PC Act**, while he is acquitted for the offence under S.120 B IPC. Criminal Appeal No. 315/2021 of Tara Dutt is accordingly, disposed of.

156. However, in the light of the aforesaid discussion, it is held that there is no offence proved against **Mukul Kumar and Ramesh Kumar**, who are hereby acquitted and **their Appeal No. 319/2021, is accordingly, allowed.**

157. Pending Applications if any, are disposed of accordingly, disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 26, 2025
Va/R/RS