



2025:DHC:470



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

% Reserved on : 20.11.2024
Pronounced on : 28.01.2025

+ **CRL.A 376/2010**

**RAJESH KUMAR BALIYAN (NOW DECEASED)
THROUGH HIS WIFE RAGHUBIRI DEVI**

.....Appellant

Through: Mr.R.P. Luthra, Mr.Praveen Mishra,
Mr.Arun Kumar and Mr.Rahul S.,
Advocates

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr.Hemant Mehla, APP for State
with SI Naresh Kumar

**CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

JUDGMENT

1. The present appeal has been filed against the judgement of conviction and order on sentence dated 12.03.2010 passed by Special Judge, Delhi in Criminal Case No. 124/2008 arising out of FIR No. 28/2003 registered under Sections 7/13 of Prevention of Corruption Act, (hereinafter, referred to as 'PC Act') at P.S. Anti-Corruption Branch, Delhi.

Vide the impugned judgement, the appellant was convicted for the offences under Sections 7 and 13(1)(d) of PC Act and vide the order on sentence, he was directed to undergo rigorous imprisonment for a period of two years along with fine of Rs.10,000/- on each count, in default whereof,



he was directed to undergo further simple imprisonment for a period of six months. The said sentences were directed to run concurrently. The appellant was given the benefit of Section 428 Cr.P.C.

2. The facts in a nutshell are that the Complainant *Mohd. Fahad* had purchased a flat in name of his mother which was allotted by DDA. The complainant was asked by BSES department to get some documents attested by a DDA officer for purposes of meter installation. The appellant was an Executive Engineer attached with Electrical Division No.7, Keshav Puram, Lawrence Road, Near Water Tank, Delhi. The complainant met the appellant on 23.06.2003 when the appellant allegedly demanded Rs.3,000/- for attesting the documents. When the complainant resisted, the appellant settled for a sum of Rs.1,000/- and asked him to come on 28.06.2023. On the said date, the complainant went to the Anti-Corruption Branch and gave a written complaint Ex. PW6/A in presence of *panch* witness *Uma Shanker Gupta* before Raid Officer insp. *Sheel Nidhi*. The complainant arranged Rs.1,000/- in cash in the form of two currency notes in the denomination of Rs.500/-each and handed them to the Raid Officer. The notes were also checked by the *panch* witness and their serial numbers were noted down and they were treated with Phenolphthalein Powder in the pre-trap proceedings. The Raid Officer explained the purpose of treating the notes with Phenolphthalein to the complainant and *panch* witness. The complainant, *panch* witness and Raid Officer alongwith other members of the raiding team reached the DDA office, Lawrence Road at 2.50 PM. At about 3.25 PM, PW13 received the pre-determined signal from the *panch* witness and he along with raiding team rushed to the room in which JE and AE used to



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sit. *Panch* witness informed him that the appellant demanded and accepted the bribe money of Rs.1000/- from the complainant with his left hand and kept the same in left pocket of his pant. On the directions of the Raid Officer, the *panch* witness recovered the bribe amount of Rs.1000/- from left side pant pocket of accused and the serial numbers of the notes tallied with those noted down in pre trap proceedings. The left hand of the appellant was dipped in sodium carbonate solution which turned the colourless solution pink. The appellant was thereafter apprehended.

3. It is duly informed that during the course of proceedings, the appellant has expired on 11.06.2021. Since the outcome of the appeal would have an impact on the pensionary benefits of the deceased, the wife of the appellant was granted leave under Section 394(2) Cr.P.C. to continue the appeal vide order dated 02.08.2022 and was substituted as appellant in the place of deceased. For convenience's sake, the deceased is referred to as the appellant.

4. In the present trial, a total of 13 witnesses were cited by the prosecution to prove its case. The complainant was examined as PW6. PW8 was the shadow/*panch* witness arranged by the trap laying/raid officer, who was examined as PW13. Mr. *D.K. Jha*, AE whose signatures were on the document for which the bribe was demanded, was examined as PW5. Besides above, the other witnesses were formal in nature relating to various aspects of investigation.

On the other hand, the accused, in his statement recorded under Section 313 Cr.P.C. claimed that he was innocent and that he had been falsely implicated in the case. He also examined one *Vijay Singh*, a junior



engineer in the same division, as DW1.

5. On behalf of the appellant, the impugned judgment has been assailed on the ground that the testimonies of the witnesses do not inspire confidence being full of material improvements and that the impugned judgement has been passed on the basis of surmises and conjectures. It is contended that there is no evidence to suggest that the appellant had ever demanded any illegal gratification from PW6. He further submitted that neither the complainant nor the *panch* witness supported the prosecution case. Learned counsel also contended that there were material contradictions in respect of the complainant's visit to the office of DDA and the police station as well as the alleged demand and acceptance of bribe.

6. Learned APP on the other hand vehemently opposed the present appeal and submitted that the Trial Court rightly convicted the appellant on basis of sufficient material gathered against him. He submitted that the complainant had correctly identified the accused in his initial testimony and it was only in his cross examination that was conducted 8 months later, he had turned hostile. He submitted that the *panch* witness was also similarly turned over by the appellant.

7. I have heard the learned counsels for the parties and gone through the material placed on record. In the present case, neither the complainant nor the *panch* witness supported the prosecution case. In his complaint Ex. PW6/A, the complainant mentioned that one *Mr. Walia*, Executive Engineer demanded the bribe. However, when he was asked in his cross examination whether the appellant was the said *Mr. Walia*, the complainant said that “*he was like the accused but I am not sure about identity.*” Even the *panch*



witness in his testimony failed to identify the appellant as the person who was present in the DDA office that day. He stated that he pointed out the appellant at the behest of APP. Moreover, in his cross examination, the complainant stated that the entire complaint was dictated by some inspector of the AC branch.

On the aspect of trap proceedings, the complainant deposed that “*all the other proceedings including search of the accused, washes etc were conducted at AC Branch.*” The *panch* witness in his testimony also stated that after recovery of GC notes by the raiding team, the appellant was brought to the AC branch where PW13 conducted the rest of the proceedings. This is in direct conflict with the statement of the Raid Officer PW13 and other police witnesses, according to whose testimonies the rest of the proceedings, such as left hand wash and pant wash took place at the raid spot and not at ACB office.

8. The appellant, in his Statement under Section 313 Cr.P.C., took the defence that the complainant came to him on 18.06.2003 and not on 28.06.2003 on which he obtained signatures of Mr. *D.K. Jha*, AE (PW5) and the seal on the same was put by sub divisional clerk. However, he did not return the document as it was not signed by Dr. *Anil Kumar*, in whose name the flat was allotted and there was no transfer document in favour of mother of the complainant and he asked the complainant to either bring *Dr. Kumar* or the transfer document. He further stated that on 28.06.2003, when he was sitting with JE *Vijay Singh*, the police officers of ACB came and took him away to their office alongwith the file.

Vijay Singh was examined as DW1. He supported the version of the



defence. Mr. *D.K. Jha* was examined as PW5 who stated in his cross examination that he had not signed the document on 28.06.2003 but rather on 18.06.2003. He also stated that the seal present on the document was not usually present with the appellant. The document on which the attestation was required by the complainant is the inspection report Ex. PW5/A. The same is dated 18.06.2003 which is prior in time to the alleged raid as well as to 23.06.2024, the date on which the complainant as per his testimony first met the appellant. It is pertinent to mention that neither the complainant nor the *panch* witness has stated that Ex. PW5/A was handed over to them by the appellant after taking the bribe.

9. To establish an offence under Section 7 or 13 of the PC act, the factum of demand as well as acceptance, both need to be proved. Mere proof of acceptance would not by itself be sufficient and proof of demand is a *sine qua non* for securing a conviction under Sections 7 and 13 (1)(d) (i) and(ii) of the PC Act. It is deemed apposite to refer to the case of B. Jayaraj v. State of Andhra Pradesh reported as **(2014) 13 SCC 55**, where the Supreme Court has categorically observed that :-

“ 8..... Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.”

The Constitution Bench later affirmed the aforesaid decision in the case of Neeraj Dutta v. State (Govt of NCT of Delhi) reported as **(2023) 4 SCC 731** and held that :-



“88. What emerges from the aforesaid discussion is summarised as under:

88.1 (a) *Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and(ii) of the Act.*

88.2 (b) *In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.*

88.3 (c) *Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.*

88.4 (d) *In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*

(i) *if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.*

(ii) *On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13 (1)(d)(i) and (ii) of the Act.*

(iii) *In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act.”*

10. As discernible from the records available and the testimonies of the witnesses, the appellant was not positively and conclusively identified by either the complainant or the *panch* witness. Notably, while the *panch* witness did not identify the appellant, the complainant was not sure about appellant's identity. PW5 deposed to signing the document in question on 18.06.2003, much before the raid which was conducted on 28.06.2003.



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There are also material contradictions as discussed above between the statements of the complainant and *panch* witness on one hand and the Raiding Officer and other police witnesses on the other hand. The prosecution has been unable to prove that there was demand of any bribe by the appellant. Conclusive evidence has not been brought on record by the prosecution to substantiate the claim that there was any demand made on behalf of the appellant. Moreover, even the testimonies of witnesses fail to inspire any confidence.

11. Upon a careful analysis of the testimonies as well as the material placed on record, this Court is of the considered opinion that the allegations against the appellant under Sections 7, 13(1)(d) of PC Act are not conclusively proved. Consequently, the appeal succeeds and the appellant's conviction under the aforesaid sections is set aside.

12. The appeal is disposed of in the above terms.

13. A copy of this judgment be communicated to the concerned Trial court alongwith the records and to the concerned Jail Superintendent for information.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 28, 2025

ry/ga