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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Judgment Reserved on: 27.01.2026***
Judgment pronounced on: 02.02.2026

+ **CRL.A. 788/2002**

SURJEET SINGH CHOUDHARY

.....Appellant

Through: Mr. Sarthak Maggon, Advocate
alongwith the wife and son of the
appellant.

versus

STATE

.....Respondent

Through: Mr. Utkarsh, APP for State.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 27 of the Prevention of Corruption Act, 1947 (the PC Act) read with Section 374 of the Code of Criminal Procedure, 1973 (the Cr.P.C.), the sole accused in C.C. No. 29/1996 on the file of Special Judge, Delhi, assails the judgment dated 25.09.2002 and order on sentence dated 27.09.2002, as per which he has been convicted and sentenced for the offences punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the PC Act.



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2. The prosecution case is that the accused, while working as Security Officer (Health) in the Municipal Corporation of Delhi and being a public servant, demanded illegal gratification of ₹10,000/- from PW2, a retired Security Supervisor (Health), for forwarding his pension file to the Additional Commissioner (Health), and on 22.11.1993 agreed to accept ₹5,000/- on 24.11.1993 at his residence as part payment, with the balance to be paid at the time of final settlement of the pension claim.

3. On 24.11.1993, PW4 lodged a complaint, that is, Exhibit. PW2/A with the Anti-Corruption Branch, CBI, Delhi, based on which Crime No.53/1993, that is, Exhibit. PW14/A FIR was registered alleging commission of offences punishable under Sections 7 and 13(2) r/w Section 13(1)(d) of the PC Act.

4. PW14, Inspector, Anti Corruption Branch, Delhi Police, conducted investigation into the crime and on completion of the same, submitted the charge-sheet/ final report alleging



commission of offences punishable under the aforementioned sections.

5. Sanction for prosecution was accorded by PW1, Commissioner, Municipal Corporation of Delhi, *vide* Exhibit. PW1/A order dated 07.10.1996.

6. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him as contemplated under Section 207 Cr.P.C. After hearing both sides, the trial court *vide* order dated 28.05.1997, framed a charge under Section 7 and Section 13(1)(d) read with Section 13(2) of the PC Act, which was read over and explained to the accused, to which he pleaded not guilty.

7. On behalf of prosecution, PWs 1 to 14 were examined and Exhibits. PW1/A, PW1/B, PW1/DA, PW1/DB, PW2/A-G, PW2/DA, PW2/DB, PW4/A-F, PW6/A-C, PW6/C1-C4, PW6/DA,



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PW6/DB, PW8/A, PW10/A-B, PW11/A and PW14/A were marked in support of the case.

8. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. He submitted that he has been falsely implicated in this case as PW2 had a grudge against him.

9. After questioning the accused under Section. 313 Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen done by the trial court. However, non-compliance of the said provision does not, *ipso facto* vitiate the proceedings, unless omission to comply the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3) KHC 89 : 2009 SCC OnLine Ker**



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2888). Here, the accused has no case that non-compliance of Section 232 Cr.P.C has caused any prejudice to him.

10. No oral or documentary evidence was adduced by the accused.

11. On consideration of the oral and documentary evidence on record and after hearing both sides, the trial court *vide* the impugned judgment dated 25.09.2002 held the appellant guilty of the offences punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the PC Act. *Vide* order on sentence dated 27.09.2002, the appellant has been sentenced to undergo rigorous imprisonment for a period of two years along with fine of ₹5,000/-, and in default of payment of fine, to further rigorous imprisonment for three months for the offence punishable under Section 7 of the PC Act, and to undergo rigorous imprisonment for a period of three years along with fine of ₹5,000/-, and in default of payment of fine, to further rigorous imprisonment for three months for the



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offence punishable under Section 13(1)(d) read with Section 13(2) of the PC Act. The sentences have been directed to run concurrently. Aggrieved, the appellant has preferred this appeal.

12. The learned counsel for the appellant assailed the impugned judgment primarily on the ground that the sanction for prosecution, which forms the very foundation of the case, is vitiated due to complete non-application of mind. It was submitted that PW1, the Sanctioning Authority, in his cross-examination categorically admitted that he had received only a draft sanction order along with a police report and accorded sanction solely on the basis thereof, without being supplied with the complaint, seizure memos pertaining to the tainted currency notes and wash bottles, or the statements of witnesses. It was further submitted that the alleged report of the Investigating Officer, which supposedly formed the basis for grant of sanction, was never produced before the court. Relying on the dictum of **Mohd. Iqbal Ahmed v. State of A.P., (1979) 4 SCC 172**, the learned counsel contended that



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sanction cannot be an empty formality and must reflect independent satisfaction of the competent authority on consideration of all relevant material. The learned counsel submitted that the mechanical manner in which sanction was granted renders the entire prosecution vitiated in law. It was further submitted that the very fairness of the prosecution is rendered doubtful by the admitted circumstance that a senior police officer, namely, an Assistant Commissioner of Police, accompanied PW2 to the Anti-Corruption Branch, indicating that the initiation of proceedings was authority-driven rather than arising from an independent investigative assessment.

12.1. The learned counsel for the appellant further submitted that the prosecution case rests substantially on the testimony of PW2, whose credibility is seriously impeached by his own admissions and conduct. It was argued that PW2 was admittedly inimical towards the appellant, having received nearly twenty show-cause notices from the latter, repeated warnings, and



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facing imminent disciplinary action including suspension, which led PW2 to approach the Commissioner, MCD, to save himself. The learned counsel also pointed out that the appellant was due to retire within a few days of the alleged incident, which circumstance substantially erodes any plausible motive to demand illegal gratification and lends weight to the defence plea of false implication. It was further submitted that PW2 admitted to illegally drawing dearness allowance from two departments, namely, the Army and the MCD, and that a substantial amount was later recovered from him by the Army. The learned counsel contended that PW2, being an accomplice and a person of questionable integrity, his testimony could not have been relied upon without independent corroboration, which is conspicuously absent. It was also pointed out that PW6 deposed regarding PW2 threatening office staff by claiming influence with senior officers of the Anti-Corruption Branch, thereby further eroding his credibility.



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12.2. The learned counsel for the appellant submitted that the prosecution failed to prove the essential ingredient of demand, which is the *sine qua non* for offences under Sections 7 and 13 of the PC Act. It was argued that there are material and irreconcilable inconsistencies between the testimonies of PW2 and PW3 regarding the alleged demand, the words spoken, the language of conversation, and even the role attributed to the appellant at the time of the alleged transaction. While PW2 claimed that the conversation took place in Punjabi and involved a clear demand, PW3 stated that the conversation took place in Hindi and initially deposed that the appellant did not ask for any money, later improving his version when led by the prosecution. It was further urged that the entire prosecution version rests solely on oral assertions without any contemporaneous electronic or objective corroboration, thereby rendering proof of demand doubtful, particularly in the face of material inconsistencies. Relying on the dictum of **Rajesh Gupta v. State (through CBI)**,



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CRL.A.1769/2014, it was submitted that mere recovery of currency notes is insufficient in the absence of proof of demand and voluntary acceptance, and that presumption under the PC Act cannot arise unless demand is proved beyond reasonable doubt.

12.3. The learned counsel for the appellant further submitted that even the allegation that the appellant demanded bribe for clearing the pension file is inherently improbable, a contention which was specifically raised and noticed in paragraph 24 of the impugned judgment. It was argued that PW2 himself admitted that prior to his retirement he had been issued Exhibit PW2/DA letter dated 28.09.1993 by the appellant, calling upon him to furnish a certificate from the Army authorities regarding dearness allowance. PW2 also admitted that he never replied to the said letter. The learned counsel contended that if PW2 himself failed to furnish the requisite certificate and the pension file lacked vigilance clearance and was incomplete as on the date of the alleged incident, there was no occasion for the appellant to process



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or clear the file, and consequently no occasion for demanding any gratification.

12.4. The learned counsel for the appellant also assailed the prosecution case on the aspect of link evidence and chain of custody, contending that the integrity of the alleged wash samples was not established in accordance with law. It was argued that though four sample bottles were allegedly prepared, two pertaining to the hand wash (RHW-I and RHW-II) and two to the pant pocket wash (RPW-I and RPW-II), only two bottles (RHW-I and RPW-I) were forwarded to the CFSL without any explanation as to why the remaining samples were retained, where they were kept, and under whose custody. It was further submitted that the samples were not kept in a notified *malkhana* but in the personal almirah of a police officer, thereby breaking the chain of custody. The learned counsel pointed out that the pant of the accused was never sent for chemical examination and that the alleged pant pocket wash was conducted at the spot itself, resulting in destruction of the best



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available evidence. It was further contended that the prosecution failed to examine the police official who allegedly conducted the pant pocket wash, leaving a crucial link witness unexamined. The learned counsel submitted that the inconsistencies regarding the place of wash, the person who conducted it, the custody of the seal, and the timing of return to the police station cumulatively render the chain of custody doubtful and strike at the root of the prosecution case.

12.5. The learned counsel for the appellant further submitted that the alleged recovery proceedings are vitiated by serious procedural lapses, inasmuch as the raid officer did not offer his own personal search to the appellant or to the independent witness prior to conducting the search, a fact admitted by PW3 in his cross-examination. It was argued that in the absence of such safeguard, and having regard to the presence of multiple members of the raiding party at the spot, the possibility of planting of tainted currency cannot be ruled out. The learned counsel further



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contended that the omission in the FIR to mention the alleged demand of ₹5,000 as first instalment is not a minor discrepancy but goes to the root of the prosecution case, as the amount demanded forms the very substratum of the charge, and such omission further weakens the credibility of the prosecution version.

13. *Per contra*, the learned Additional Public Prosecutor supported the impugned judgment and submitted that the sanction for prosecution was validly accorded by the competent authority and does not suffer from non-application of mind, as mere reliance on a draft sanction or a police report does not vitiate the sanction in the absence of any failure of justice. It was further submitted that the credibility of the complainant cannot be doubted merely on account of disciplinary proceedings or prior official friction with the appellant, and that the alleged misconduct relating to dearness allowance is collateral. The learned Additional Public Prosecutor contended that demand and acceptance of illegal gratification stand proved through the testimonies of PW2 and PW3, the *panch*



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witness, duly corroborated by the raiding officer and the positive phenolphthalein test. It was argued that minor variations regarding language or the exact words spoken do not affect the core of the prosecution case, and that the appellant, being in a position to grant clearance in the pension matter, could facilitate or obstruct the process, thereby attracting the provisions of the PC Act.

13.1. The learned Additional Public Prosecutor further submitted that the recovery of tainted money and the wash proceedings stand duly proved and that it is not mandatory that all samples collected be sent to the CFSL, as forwarding of representative samples is sufficient. It was argued that non-examination of every official associated with the process does not vitiate the prosecution case when the essential links are otherwise established. It was further contended that the inconsistencies pointed out by the defence relate to peripheral aspects and do not go to the root of the matter. It was therefore urged that the prosecution has proved the case beyond reasonable doubt, the



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statutory presumption under the PC Act stands attracted, and the appeal deserves to be dismissed.

14. Heard both sides and perused the records.

15. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgement calling for an interference by this court.

16. I shall first refer to the evidence on record relied upon by the prosecution in support of its case. PW2 submitted a written complaint, i.e., Exhibit PW2/A, on 24.11.1993 in the office of the Anti-Corruption Branch in which he has stated thus: He is a re-employed ex-serviceman working as a Security Supervisor at I.D. Hospital, Kingsway Camp, Delhi, and that his head office is at the Municipal Corporation of Delhi, Town Hall. His retirement was due on 30.11.1993 and that his Chief Security Officer (Health), namely, the appellant/accused, was harassing him by demanding illegal gratification of ₹10,000/-, threatening that in case the said amount was not paid, his pension and dearness allowance would



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be stopped. Since PW2 did not pay the demanded amount, the appellant had not forwarded his retirement pension file to the Additional Commissioner (Health), MCD. On 22.11.1993 at about 2:00 PM, he met the appellant/accused at his office in Town Hall and requested the latter to reduce the demanded amount and to forward the former's retirement file. The appellant/accused agreed to accept ₹5,000/- as part payment and asked him to come to his residence at 112, Block-10, Tilak Nagar on 24.11.1993 at about 10:30 AM to deliver the said amount, stating that the remaining ₹5,000/- should be paid at the time of full and final settlement of the pension claim. PW2 agreed to the said demand under compulsion, that he bore no personal enmity or prior dealings with the appellant, and that since the appellant was to accept ₹5,000/- as bribe on that day, legal action be taken against him. PW2 also stated that he is a retired Subedar from the Army, drawing pension, knows how to read and write Hindi.



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17.PW2, when examined before the trial court, deposed that after serving in the Army, he was re-employed in the Municipal Corporation of Delhi as a Security Supervisor and retired from the MCD in November 1993 and that prior to his retirement from the MCD, he was required to obtain clearance for entitlement of dearness allowance with his pension from the Army. He further stated that the appellant demanded illegal gratification of ₹10,000/- from him for clearing his papers. He further stated that on 22.11.1993 the appellant demanded ₹10,000/- and agreed to accept the amount in parts, fixing the first instalment of ₹5,000/- to be paid on 24.11.1993 at about 10:15 AM at the residence of the appellant, with the balance amount to be paid after the papers were signed. On 24.11.1993, he went to the office of Anti-Corruption Branch and submitted his written complaint, Exhibit PW2/A.

17.1. PW2 also deposed regarding the manner in which the raid was arranged. He stated that he produced ₹5,000/- comprising one currency note of ₹500/- and forty-five currency



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notes of ₹100/- each, the numbers whereof were noted and phenolphthalein powder was applied. He further deposed that the raiding party, including officials of the Anti-Corruption Branch, proceeded in a government vehicle to Tilak Nagar, where the residence of the appellant is situated. As directed by the appellant/accused, he along with PW3, the *panch* witness, went to the house of the appellant and waited outside, as the time fixed was 10:30 AM. The appellant came downstairs after some time and enquired whether the money had been brought. PW2 stated that the conversation took place in Punjabi and that upon his answering in the affirmative, he handed over the money to the appellant, who accepted it with his right hand and kept it in the right-side pocket of his pant. PW2 deposed that the appellant assured him that he would sign his file, adjust the dearness allowance, and asked him to pay the remaining ₹5,000/- later. Thereafter, PW3 gave the pre-arranged signal, upon which the Inspector came and apprehended the appellant. PW2 further



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deposed that PW14, the Inspector challenged the appellant for having accepted the bribe and that the appellant became perplexed. PW14 recovered the currency notes from the right-side pocket of the pant of the appellant and the numbers of the notes tallied with those recorded in the raid report. PW2 further deposed regarding the formalities that were complied with by the CBI team thereafter, including the fact that the carbonate solution turned pink when the appellant/accused was made to dip his left hand in the same. The inner lining of the pocket of the garment worn by the appellant/accused also turned pink on being dipped in the solution.

17.2. In his cross-examination, PW2 admitted that during his service in MCD, he had been drawing dearness allowance from both the Army and the MCD and that he had continued to receive the same even after issuance of Exhibit PW2/DA letter by the appellant, calling upon him to furnish a certificate from the Army authorities. He admitted that he did not reply to the said letter and did not obtain any certificate from the



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Army, despite knowing that drawing dearness allowance from both places was an offence. PW2 further admitted that the dearness allowance paid to him by the Army was subsequently recovered after his retirement and that a substantial amount had been deducted. He also admitted that he had received a show-cause notice from the Army in this regard. PW2 further admitted that he had lodged complaints against certain clerks in the department and that the appellant had issued several show-cause notices to him, though he denied that he bore grudge or ill-will against the appellant. PW2 denied the suggestions that the appellant had not demanded or accepted any bribe; that the currency notes were forcibly thrust into the pocket of the appellant, or that the appellant had thrown the notes on the ground in protest. He admitted that many persons had gathered at the spot when the appellant was apprehended. He further admitted that he does not remember whether the Inspector offered his personal search before recovery of the money, that the money was recovered prior to the hand wash



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being taken, and that the Inspector handled the currency notes while tallying their numbers. PW2 stated that he could not recollect who had washed the pant pocket of the appellant and that his own hand wash was not taken. He denied the suggestion that no pre-raid or post-raid proceedings were conducted or that he had made a false statement.

18. PW1, the Commissioner, Municipal Corporation of Delhi, deposed that he had accorded sanction for prosecution, *vide* Exhibit PW1/A. The appellant/accused had been working as Security Officer in the MCD and that he was competent to remove the latter from service. After carefully perusing the material placed before him and duly considering the allegations and circumstances of the case against the accused, he accorded sanction for prosecution of the accused.

18.1. PW1 admitted during his cross-examination that he hadnot called the Investigating Officer or any official of the Anti-Corruption Branch before granting sanction and that neither



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the judicial file nor the police file had been placed before him. He further admitted that he had not received a copy of the complaint, the seizure memos relating to the money or wash bottles, or the statements of witnesses. PW1 stated that he had received Exhibit PW1/DB draft sanction order, along with Exhibit PW1/DA report of the Investigating Officer, and that sanction was granted on the basis thereof and the letter of the DCP.

19. PW3, Panchayat Secretary, Government of Delhi, deposed that he was deputed as *panch* witness in the A.C. Branch. PW2 had come to the A.C. Branch and that Exhibit PW2/A complaint had been recorded in his presence and that it was also signed by him. He further deposed that he was instructed to remain close to PW2 to see the transaction and hear conversation between PW2 and the accused. He was also instructed to give signal by moving his hand on his head when he was satisfied that the money was accepted as bribe by the accused. The raiding party which also included staff members went to the residence of the



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accused at Tilak Nagar. The vehicle was parked at some distance. He along with PW2 went to the house of the accused while the other members followed. PW3 further deposed that the appellant/accused asked PW2 whether he had brought the money. PW2 answered in the affirmative and took out the money and gave it to the accused. The accused took the money in his right hand and put it in the right side pocket of his pants. The accused told PW2 that he would send the file and adjust the Dearness Allowance. Thereafter, he gave the pre-arranged signal, whereupon the other members of raiding party rushed to the spot and apprehended the accused. PW14, Inspector, disclosed his identity and challenged the accused who became nervous. First the accused kept mum and then started saying "no, no, no". Money was recovered from the pant pocket of the accused by the Inspector.

19.1. PW3 further deposed that number of the recovered currency notes tallied with the ones recorded in pre-raid report. The right hand of the accused was washed in a colourless



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solution prepared at the spot. The solution turned pink and was transferred into two glass bottles. Labels were affixed on those bottles and the bottles were sealed. The right side pocket of pants of the accused was also washed in another colourless solution. That solution also turned pink and it was transferred into another two bottles. Those bottles were also labelled and sealed. He had also signed on the labels of all the four bottles, on the pocket of the pants of accused and also on the slip of paper which was placed under the seal while sealing the pants. The pants was also then sealed in an envelope and he had also signed on the envelope. Currency notes, that is, Exhibit P-1 to Exhibit P-46 were seized *vide* Exhibit PW2/C memo. At this juncture, the prosecutor sought the permission of the Court to 'cross examine' PW3 on the ground that the witness appeared to have forgotten the conversation which took place between PW2 and the accused. The request was allowed by the trial court. On being further examined by the prosecutor, PW3 deposed that when PW2 informed the accused



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that he had brought the money, the accused demanded the money by saying "*Laa*" and that after accepting the money with his right hand, the accused asked PW2 "*Kitne Hain?*" and PW2 informed him that there was five thousand rupees. He further deposed that after the accused told PW2 that his file would be sent and the accused will adjust the dearness allowance, PW2 told the accused that he would give the remaining amount of ₹5,000/- after the work was done, and that PW2 should give the remaining amount of ₹5,000/- later on.

19.2. In the cross-examination, PW3 admitted that he had reached the A.C. Branch at about 9.30 a.m. As per duty roster, he had gone to the A.C. Branch on 23.11.1993. On that day, he was directed to report again on 24.11.1993, by the A.C. Branch. However, he was not deputed in the roster for 24.11.1993. The duty officer had directed him to come again on 24.11.1993. PW3 further stated that they had left the Anti Corruption Branch at 10:00 or 10:15 a.m. They reached the spot at about 11 a.m. They



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met the accused on the road outside his house. He was standing with PW2 at that time. The accused did not enquire about him to PW2. He does not remember if PW2 had told the accused that he wanted to be recruited as a gunman and was prepared to pay Rs. 15,000. The accused did not question his presence there. The conversation between PW2 and the accused took place in Hindi, not in English or Punjabi.

19.3. PW3 further deposed that neither PW2 nor the accused had suggested that they should go to the house of the accused and that they were standing on a public road and there were passers-by. He stated that when the accused asked PW2 whether he had brought the money, no specific amount was mentioned by either the accused or PW2. PW3 stated that after application of powder, the currency notes were handed over to PW2, who kept them in his shirt pocket inside a folded paper, and that PW2 handed over the money to the accused with his right hand without the paper, which remained in PW2's pocket. He



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stated that the hand wash and the pant pocket wash of the accused was taken by PW14, the Investigation Officer. However, the hand wash and the shirt pocket wash of PW2 was not taken and the paper in which the money had been kept was also not seized. PW3 identified the pant produced in court as the same pant worn by the accused at the time of the incident. He stated that the recovery of money and the hand wash were conducted at the spot on the road, whereas the pant pocket wash was taken in the office of a workshop across the road, at a distance of about 500 yards, where the writing work was also carried out. PW3 further stated that no person from the office of the workshop was asked to sign the proceedings. They returned to the Anti-Corruption Branch by about 4:00 or 5:00 PM and that he remained there for about 10 to 15 minutes. He deposed that he does not remember whether any bottles were kept in any almirah in his presence. The seal after use was handed over to him, but no receipt was obtained for the seal. He does not remember the initials on the seal, which was a brass



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seal and that he did not obtain any receipt when the seal was returned.

20. PW4, then Inspector, Anti-Corruption Branch, Delhi deposed that on 24.11.1993 he was also in the trap team headed by PW14 and that he had been directed to remain with PW2 with the direction to overhear the conversation between PW2 and the accused. They reached near the residence of the accused at Tilak Nagar, New Delhi. He was sitting in the vehicle during the raid. Investigation of this case was handed over to him by PW14. PW14 had handed over the tainted money which was seized *vide* Exhibit PW2/C memo and the pants *vide* Exhibit PW2/D memo. The pant pocket wash was seized *vide* Exhibit PW2/E seizure memo. The accused was also produced before him. PW4 deposed that the sealed bottles containing right hand wash of the accused and pocket wash were brought to the Police Station. Out of two right hand wash, one bottle of right hand wash (RHW-I) and out of two pocket wash, one bottle (RPW-I) were kept in the *malkhana* and



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one bottle each was kept in the almirah of ACP, KC Verma (PW5). The almirah was locked and the key was kept by PW5. He retained the seal. The next day, the seal when checked in the presence of PW5, was found intact. The seal was broken and the almirah opened. The case property was taken out, both the bottles were found intact and were taken by him to the office of CFSL for examination. Articles recovered in personal search of the accused were also deposited in the *malkhana* of Police Station Civil Lines.

20.1. PW4, in his cross-examination, admitted that he had joined the raid only to the extent of accompanying the raiding party from the Anti-Corruption Branch up to the place where the vehicle was parked and that the investigation of the case was entrusted to him only after completion of the post-raid proceedings. He further admitted that during investigation he came to know that PW2 had visited the Anti-Corruption Branch on 23.11.1993. According to PW4 the post-raid proceedings were conducted at the spot and not in any workshop. He admitted that it



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is a matter of record that PW2 had been drawing dearness allowance from both the Army and the MCD, though he stated that he had no personal knowledge as to whether such conduct constituted an offence. PW4 further stated that all documents prepared by the raid officer were handed over to him when the investigation was entrusted to him and that all the memos were in the handwriting of the raid officer. He admitted that no receipt was obtained from PW5 for depositing the wash bottles, though an entry was made in the daily diary. He further admitted that the *panch* witness was not present when the bottles were deposited and that the office of PW5 was not a notified *malkhana*, though the bottles were kept there as per the prevailing practice in the Anti-Corruption Branch.

21. PW5, Shri K.C. Verma, ACP, D-Cell, Delhi Police, deposed that on 24.11.1993 two sealed exhibits, namely RHW-I and RPPW-I, along with the sample seal of PW4 were received by him and kept in his almirah, which was locked with his key and



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sealed with the seal of PW14. He stated that on 25.11.1993 the seal was broken and the almirah was opened with his key and the said exhibits along with the sample seal were taken out by the Investigating Officer for being deposited with the CFSL. PW5 stated that so long as the case property remained in his custody, it was not tampered with and the seals remained intact.

21.1. PW5, in his cross-examination, admitted that the Anti-Corruption Branch is a notified police station, whereas his office was not a notified *malkhana*. He admitted that his signatures were not obtained on the recovery memo as acknowledgment of having received the case property and that he did not issue any receipt to the Investigating Officer. He further admitted that the *panch* witness was not present at the time the case property was deposited with him and that no public person was associated at that stage. PW5 also admitted that no CFSL form was deposited along with the case property. He stated that the key of the almirah was given by him to the Investigating Officer and that the seal was kept by



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him. He further admitted that no public person or *panch* witness was present when the seal was broken and the almirah opened for handing over the case property to the Investigating Officer. PW5 also stated that he did not maintain any register regarding deposit of case property. He further admitted that the seal 'BS' used in the case belonged to Inspector Balwan Singh, who subsequently became the Investigating Officer.

22. PW6 deposed that on 18.11.1978, she was working as LDC, Municipal Corporation of Delhi. During the relevant period, the Security Wing was dealing with the pension papers of the employees, including that of PW2. PW6 further deposed that on 30.11.1993 she handed over the service book and pension-related documents of PW2 to the PW14. PW2 further deposed that the office of the appellant was searched and the files relating to administrative approval and service book of PW2 had been seized.

22.1. PW6, in her cross-examination, admitted that Exhibit PW2/DA notice had been issued by the appellant to PW2,



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requiring the latter to submit a reply within a fortnight. However, PW2 never replied to the said notice. She admitted that in the absence of such reply, the pension papers of PW2 could not be signed by the appellant/accused. She further admitted that PW2 was an ex-serviceman and that an employee cannot draw dearness allowance from two departments at the same time. She deposed PW2 had been asked to submit his pension book, but he never complied with the same. PW6 further deposed that during her tenure she had dealt with PW2's case relating to leave encashment and that upon scrutiny by the Accounts Branch, discrepancies were noticed in the leave records, including incorrect absentee statements and excess claims. She stated that the Additional Deputy Commissioner (Health) had called for her comments on the pension papers of PW2 and that she had submitted the same. PW6 further deposed that after the initiation of the case on hand, PW2 had visited the office and threatened her and the other officials by claiming that one Chauhan, ACP of the Anti-



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Corruption Branch was his close friend and that he could put all of them in trouble with the help of his friend. Pursuant to the same, a written complaint was given to the Anti-Corruption Branch, a copy of which has been marked as Exhibit PW6/DB.

23. PW7 deposed that on 10.01.1995 he was posted as ACP, Anti-Corruption Branch, and that the investigation of the case had been entrusted to him. PW7 deposed that that he partly investigated the case, questioned PW1, PW3, PW6 and PW12 as well as seized certain documents relating to PW2, including Exhibit PW6/C1 to Exhibit PW6/C4, *vide* Exhibit PW6/C memo. PW7 further deposed that the investigation was handed over to PW8.

24. PW8 deposed that on 02.01.1996 he was posted as Inspector in the Anti-Corruption Branch and on that day the case file was handed over to him for further investigation. He further stated that he collected photocopies of the attendance register of the appellant/accused, and he thereafter obtained sanction for



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prosecution of the accused and submitted the charge-sheet. In his cross-examination, PW8 stated that he does not know whether there was any notification or order authorising him to investigate the present case as an Inspector of the Anti-Corruption Branch.

25. PW9 produced the service book of the appellant/accused who was working as Security Officer (Health), MCD, Town Hall, Delhi. PW9 deposed that the service book had earlier been produced before the Investigating Officer.

26. PW10 deposed that in the year 1993 he was working as a Security Guard in the Health Department of MCD and that the appellant/accused was posted as Security Officer at that time. He stated that he had shown the attendance register of the year 1993 to PW14 and produced a photocopy of the same, which was taken into possession *vide* Exhibit PW8/A memo.

26.1. PW10 in his cross-examination, deposed that in November 1993 he was attached with the appellant/accused as a Security Guard and that his duty was to remain outside the office



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room of the latter as a Security Guard-cum-peon. He stated that visitors used to write their names on slips which were handed over to the appellant, and only thereafter permission to meet the latter was granted. PW10 further deposed that he knew PW2, who was working as a Security Supervisor under the appellant. He stated that on 22.11.1993, PW2 never came to meet the appellant in his office and that he was present on duty throughout the day. PW10 further deposed that the staff members had lodged a report with the ACP, Anti-Corruption Branch, alleging that PW2 used to threaten them by claiming that one ACP of the Anti-Corruption Branch was his close associate.

27. PW11 deposed that on 25.11.1993 two sealed bottles bearing the seal of “BS” were received in the office of CFSL along with the specimen seal and forwarding letter. The bottles, marked RHW-I and RPPW-I, contained pink liquid of about 85 ml and 80 ml respectively. PW11 deposed that the seals tallied with the specimen seal and thereafter chemical examination was conducted



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under his supervision. According to PW11, the contents of both bottles tested positive for phenolphthalein and sodium carbonate. He further deposed that after examination, the remaining contents were resealed with the CFSL seal and returned along with the report and sealed impressions to the forwarding authority.

27.1. In his cross-examination, PW11 admitted that a worksheet was prepared at the time of examination of the exhibits and that the final report was prepared thereafter. He stated that the worksheet was prepared by his assistant in a printed proforma in the assistant's handwriting and was signed and countersigned, but the worksheet was not produced in court as it formed part of the CFSL office record.

28. PW12 deposed that on 18.04.1994, while he was posted as MHCM at Police Station Civil Lines, two bottles marked RHW-I and RPPW-I along with one sealed envelope of CFSL were deposited in the *malkhana* by an Inspector. He stated that the case property was kept in safe custody and necessary entries were made



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in Register No. 19. According to PW12, so long as the case property remained in his custody, it was not tampered with and the seals remained intact.

29. PW13 deposed that on 31.01.1994, while he was posted as Inspector in the Anti-Corruption Branch, he took over the case for further investigation after the transfer of the earlier Investigating Officer. He stated that during the course of investigation he recorded the statement of a Head Clerk of MCD and thereafter handed over the case file to ACP for further investigation. In his cross-examination, PW13 denied the suggestion that he was not empowered to investigate the present case for want of a general or special order under the PC Act.

30. PW14 deposed that on 24.11.1993, while posted as Inspector in the Anti-Corruption Branch, PW2 approached him and gave Exhibit PW2/A complaint. PW2 produced ₹5,000/-, the numbers of which were noted and phenolphthalein powder was applied. The treated notes were handed over to PW2 with



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instructions to deliver the same only on specific demand in the presence of the *panch* witness, who was directed to give a pre-arranged signal. A raiding party was thereafter constituted, who proceeded to the residence of the accused at Tilak Nagar. At about 10:45A.M., on receipt of the signal, PW14 and other members of the raiding party rushed to the spot, challenged the accused and apprehended him. The tainted currency notes recovered from the right side pocket of his pant, tallied with the pre-raid record and were seized *vide* Exhibit PW2/C memo. The right hand wash and pant pocket wash of the accused turned pink and the solutions were sealed in bottles marked RHW-I, RHW-II, RPPW-I and RPPW-II and seized *vide* Exhibit PW2/E memo. The pant, envelope and slip were seized *vide* Exhibit PW2/D memo.

30.1. In his cross-examination, PW14 admitted that he was aware that drawing dearness allowance from two departments simultaneously was illegal and that while recording of PW2's statement he realised that PW2 had been drawing Dearness



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Allowance from both the Army as well as the MCD. He admitted that as per the complaint the transaction was to take place at the house of the accused, though the actual transaction did not take place inside the house. He stated that the place of transaction was not visible to him from where he was positioned and that the accused was apprehended in a service lane.

30.2. PW14 further admitted that he had not offered his personal search either to PW3, *panch* witness or to the accused prior to conducting the search. He stated that the hand wash and pant pocket wash of the accused were taken by a Head Constable, though he had not mentioned the name of the said official in the seizure memos or post-raid report. He admitted that the hand wash of PW2 was not taken. According to PW14, the accused was arrested in a service lane. The accused had not been taken to any garage or shop situated nearby. All the post-raid proceeding was conducted at the spot. People were passing by in the service lane. One or two persons might have gathered at the spot. PW14 also



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admitted that PW2 was accompanied by an ACP of Delhi Police when he came to the Anti-Corruption Branch to lodge the complaint prior to the raid.

31. The question is, whether the aforesaid evidence on record is sufficient to prove the prosecution case. The same appears to be quite doubtful. The specific case of PW2 is that the accused had not forwarded his pension file to the authority concerned and that the accused was harassing him by demanding illegal gratification of ₹10,000/- and threatening him that in case he failed to pay the amount, his pension and dearness allowance would be stopped. Therefore, on 22.11.1993, at about 2:00 p.m., he met the appellant/accused in the office of the latter at Town Hall and requested him to reduce the amount and to forward his retirement file. On the said day, the appellant/accused is alleged to have agreed to accept ₹5,000/- as part payment and directed PW2 to meet him at his residence on 24.11.1993 with the amount and to pay the remaining amount at the time of full and final settlement of



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the pension claim. However, PW10, a loyal prosecution witness, to whose testimony I have already referred, deposed that on 22.11.1993 PW2 had never come to the office of the appellant/accused to meet the latter. PW10 deposed that he was the security guard posted on duty and was outside the office room of the appellant/accused as security guard-cum-peon for the entire day. He further deposed that any visitor to the room of the appellant/accused had to go through him. A visitor will have to write his name on a slip, which PW10 would take to the appellant/accused seeking permission. It is only when the appellant/accused grants permission, the visitor would be able to enter the room of the former and meet the former. PW10 categorically asserted that PW2 had never visited the office of the accused on 22.11.1993.

31.1. PW10, as noticed earlier, is a loyal prosecution witness. During his examination no permission was sought by the prosecutor to put questions in the nature of cross-examination, nor



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did the prosecution contend that PW10 had resiled from his earlier statement or was deliberately deposing falsely. There is, therefore, no reason to disbelieve the testimony of PW10. If that be so, the assertion of PW2 that he had gone to the office of the appellant/accused on 22.11.1993 and that the accused discussed the bribe and the manner of its payment falls to the ground.

32. I also refer to the testimony of PW6, who deposed that though Ex. PW2/DA notice had been issued by the appellant/accused to PW2, the latter failed to reply to it. PW6 further deposed that in the absence of a reply, the pension papers of PW2 could not have been processed by the appellant/accused. PW6 is yet again a loyal prosecution witness. In such circumstances, it appears highly improbable for the appellant/accused to have demanded a bribe for processing the pension file, as the first step for processing the file had to be taken by PW2 himself, which the latter admittedly failed to comply. It has also come on record that several show-cause notices had been



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issued by the appellant/accused to PW2 directing him to take necessary steps. PW2 has admitted that he did not reply to those notices.

33. Another aspect which deserves notice is the testimony of PW6 as well as PW10 to the effect that PW2 used to threaten the staff of the MCD that he could put them all in trouble as one of his friends was an ACP in the Delhi Police. Their testimony assumes significance, particularly when the accused has a specific case that PW2 had initiated this false complaint against him with the assistance of his ACP friend.

34. Further, according to PW2, on the date of the trap, the conversation between him and the accused took place in Punjabi, whereas PW3, the *panch* witness, deputed to watch and hear the conversation, stated that it took place in Hindi. PW3 stated that the post-trap proceedings took place in a workshop, whereas PW4 and PW14 have no such case and stated that the entire proceedings took place in a by-lane near the house of the accused. PW 3



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deposed that after completing all the formalities, they returned to the office between 04:00 P.M. and 05:00 P.M. According to PW2, he along with the trap team had reached near the house of the accused by about 10:30A.M. Going by the version of PW4 and PW14, the trap and post-trap proceedings were conducted in a by-lane near the residence of the appellant/accused. Does that mean that for the entire day they were on the street completing the so called formalities? That is highly unlikely. Yet another aspect is whether PW3 was actually on duty on the said day because in the cross examination, he deposed that though he had reported for duty on 24.11.1993, he was not deputed in the roster of the day. Further, materials have come on record to show that members of the public were passing by at the time of the incident, yet none of them, nor any person from the workshop where part of the proceedings was alleged to have been completed, was examined to corroborate the prosecution case.



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35. Another important aspect relates to the sanction for prosecution. PW1, the sanctioning authority, admitted that Ext. PW1/DB is the draft sanction order on the basis of which he issued the sanction. The sanction order issued appears to be a verbatim reproduction of the draft. Save for the blanks in the draft order being filled up, there is no difference in the sanction order. This raises doubts as to whether there was any independent application of mind by PW1.

36. Further, it has also come on record that PW2 was drawing dearness allowance from the Army, where he was initially employed, and after his retirement and joining the MCD, he was also drawing dearness allowance from the MCD. Proceedings were initiated against him in that regard by the Army and the excess amount was recovered from him. If PW6 is to be believed, there were several discrepancies noted in the leave records of PW2 including absentee statements and excess claims.



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37. In the aforesaid circumstances, the claim of PW2 that the appellant/accused had demanded a bribe appears highly doubtful, particularly in the light of the testimony of PW6 and PW10, both loyal prosecution witnesses. Hence, I find that the trial court erred in relying upon such unsatisfactory evidence to hold the accused guilty of the offences alleged against him. The accused is, therefore, entitled to the benefit of doubt.

38. In the result, the appeal is allowed and the impugned judgment is set aside.

39. Applications, if any pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

FEBRUARY 02, 2026

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