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

% ***Judgment Reserved on: 11.05.2026***
Judgment pronounced on: 14.05.2026

\+ **CRL.A. 179/2004**

SUNIL KUMAR .....Appellant

Through: Mr. K.N. Balgopal, Sr. Advocate with Mr. Yash Bhushan Aggarwal, Mr. Athar Alam, Mrs. Sumbul Athar, Mr. Vilao Kense, Ms. Nitiya Nambiar and Mr. Lungnim A Shihak, Advocates.

Versus

STATE .....Respondent

Through: Mr. Utkarsh, APP for State with SI Bheem Singh, P.S. A.C.B, GNCTD, Delhi.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, (the Cr.P.C.) the sole accused, in C.C. No. 117/1994 on the file of the Special Judge, Delhi, assails the judgment dated 09.02.2004 and order on sentence dated 13.02.2004 as per which he has been convicted and sentenced for the offences punishable under Sections 7 and 13(2) read with

Section 13(1)(d) of the Prevention of Corruption Act, 1988 (the PC Act).

2. The prosecution case is that on 29.11.1989, at about 01:50 P.M., at House no.349/5, Mangolpur Khurd, Delhi, the accused, while working as, Inspector DESU (Delhi Electricity Supply Undertaking), Zonal Office, Sector-III, Rohini, Delhi, demanded, accepted and obtained ₹1500/- from PW4 for installation of electricity meter at the aforementioned address, i.e., the residence of PW4. Accordingly, as per the charge-sheet/final report dated 25.02.1992, the accused was alleged to have committed the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act.

3. Sanction for prosecution was accorded by PW5, the then General Manager (E), DESU, New Delhi, *vide* Ext. PW5/A order, dated 12.01.1992.

4. Crime no. 43/1989, was registered on the basis of PW4/A complaint of PW4. The case was initially entrusted to

PW13 and then subsequently was transferred to PW10 for investigation. After completion of investigation by PW10, a charge-sheet was filed against the accused alleging the commission of the offences punishable under the aforementioned Sections.

5. 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 28.09.1993, framed a Charge under Section 7 and Section 13 of the PC Act, which was read over and explained to the accused, to which he pleaded not guilty.

6. On behalf of the prosecution, PWs. 1 to 13 were examined and Exhibits PW2/A-B, PW3/B-C, PW4/A-H, PW4/J-K, PW5/A, PW7/A, PW8/A, PW10/A-E and PW13/A-B were marked in support of the case.

7. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.PC. 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 had neither demanded nor had accepted any money from PW4. Electricity meter could not have been installed at the residential premises of PW4 as the premises fell within an unelectrified area. This can be inferred from the testimony of PW4 who admitted that the Executive Engineer had also mentioned that the meter could not be installed in the said premises. He further submitted that even after the trap proceedings, the meter was installed only at the house of PW4's uncle.

8. No documentary evidence was adduced in support of the defence case.

9. On consideration of the oral and documentary evidence on record and after hearing both sides, the trial court *vide* the impugned judgment dated 09.02.2004 held the accused guilty of the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act. *Vide* order on sentence dated

13.02.2004, the accused has been sentenced to undergo rigorous imprisonment for a period of 18 months each along with fine of ₹5000/- each, and in default of payment of fine, to undergo further rigorous imprisonment for five months each for the offences punishable under Sections 7 and 13(1)(d) of the PC Act. The sentences have been directed to run concurrently. Aggrieved, the accused has preferred this appeal.

10. It was submitted by the learned Senior counsel for the appellant/accused that the very substratum of the prosecution case is intrinsically improbable and contrary to the materials on record. It was urged that as per the Charge framed against the appellant/accused, he is alleged to have demanded and accepted illegal gratification for installation of an electricity meter at House no. 349/5, i.e. the residence of PW4, while the latter himself has admitted in his testimony that the meter could not be installed at his residence as it is situated in an unelectrified area, which is beyond the permissible limit of 100 feet from the main electric

pole and that the same had also been categorically informed to him by the Executive Engineer. Attention of this Court was drawn to certain documents forming part of the DESU record in order to explain the official position regarding non-installation of electricity connection at PW4's premises. Admittedly the said documents had not been formally exhibited or brought in evidence. The learned Senior Counsel, however, submits that even *dehors* the said documents, the testimony of PW4 itself remains categorical and uncontroverted to the effect that both the appellant/accused and the Executive Engineer had informed him that the electricity meter could not be installed at House No.349/5 since the same was situated beyond the permissible distance of 100 feet from the main electric pole.Therefore, this establishes that no electricity connection could be legally granted in the said premises and hence, the very root of the prosecution case, namely, the very basis of the demand becomes doubtful, goes the argument. Reliance was placed on the dictum in **Ved Prakash Maurya v.**

State (NCT of Delhi), **2025 SCC OnLine Del 10660**, wherein this Court held that when the alleged work either stood already completed or could not legally be processed by the accused, the very motive or occasion for demand becomes inherently improbable. Reliance was also placed on **Har Swarup Verma v. State (NCT of Delhi)**, **2025 SCC OnLine Del 8628**, wherein this Court held that when the prosecution fails to demonstrate that the accused was in a position to extend the alleged official favour, the very premise of demand becomes doubtful.

10.1. It was further argued that, even going by the testimony of PW4, at the time of the alleged transaction, the meter could not be installed at his house, but at the residence of his uncle, situated nearby. The learned Senior counsel emphasised that this admission demolishes the prosecution case as the alleged bribe was purportedly demanded for installation of meter at House no. 349/5. It was argued that PW4 kept changing his stand by first alleging that the meter was to be installed in his own house and later stating that the same was to be installed in his uncle's premises and that such vacillating testimony renders PW4 to be an unreliable witness. To augment his contention the learned Senior counsel relied on the dictum in **Rajesh Gupta v. State, (2022) 20 SCC 793**, wherein the Apex Court held that the sole testimony of the complainant, being that of an interested witness, cannot ordinarily be relied upon in the absence of corroboration from independent evidence. Reliance was also placed on the dictum in **State of Punjab v. Madan Mohan Lal Verma, (2013) 14 SCC 153**, wherein the Apex Court held that the complainant in a trap case is an interested and partisan witness and his testimony must be scrutinized with caution and, in an appropriate case, independent corroboration should be insisted upon.

10.2. It was further contended that the prosecution has failed to prove the necessary element of "demand", which is *sine qua non* for conviction under Section 7 and 13 of the PC Act. The learned Senior counsel pointed out that there are material inconsistencies in the testimonies of PW4, PW6 and PW9 regarding the alleged demand, acceptance and recovery of the tainted currency notes. It was urged that PW6, the *panch* witness did not fully support the prosecution case and also as per the prosecution itself, the recovery of tainted money and the apprehension of the accused took place in another premises, which has been stated to be PW4's uncle's house. It was further submitted that mere recovery of tainted currency notes or positive hand-wash/pocket-wash tests are insufficient in law unless demand and voluntary acceptance are first proved beyond reasonable doubt. Reliance was placed on the dictum in **B. Jayaraj v. State of A.P., (2014) 13 SCC 55**, wherein the Apex Court held that mere recovery of currency notes, without proof of demand, cannot constitute an offence under Sections 7 and 13(1)(d) of the PC Act and in **Neeraj Dutta v. State (NCT of Delhi), (2023) 18 SCC 251**, wherein the Constitutional Bench reiterated that mere possession or recovery of tainted money is insufficient unless demand and acceptance are proved beyond reasonable doubt. Further, it was contended that the proof of offer by the bribe giver and demand by the public servant are foundational facts, which must first be established before conviction can follow by relying on the dictum in **Rajinder Kumar v. CBI, 2026 SCC OnLine Del 1421**.

10.3. It was next contended that there was no sufficient verification of PW4's allegations prior to the laying of the trap and the entire pre-raid exercise appears to have been conducted mechanically and in undue haste. It was submitted that as per the testimony of PW9, PW4 arrived at the A.C. Branch around 9:00 A.M. and within a very short span of time the complaint was recorded and the pre-raid proceedings were completed and the raiding party departed. It was also pointed out that the prosecution failed to examine Head Constable Balbir Singh, who, according to PW9, had conducted the demonstration during the pre-raid proceedings. It was argued that non-examination of such a material witness creates a serious dent in the prosecution case. Reliance was placed on the dictum in **Ram Prashad v. State (NCT of Delhi), 2026 SCC OnLine Del 1899**, wherein this Court held that absence of proper verification of the complaint and deficiencies in the investigation and contemporaneous record cast doubt on the prosecution case and that suspicion, however strong, cannot take the place of proof.

10.4. The Learned Senior Counsel submitted that there are material contradictions regarding the place of apprehension of the appellant, the manner in which the tainted money was allegedly recovered and the sequence in which the post-raid proceedings were conducted. It was urged that while one witness stated that the tainted money was thrown on the ground by the appellant upon seeing the raiding party, another witness gave a materially different version regarding recovery of the said amount. It was also submitted that no independent witness from the locality or from the alleged premises was joined by the prosecution despite the alleged proceedings taking place in a residential area. The learned

Senior counsel contended that the inconsistencies regarding the manner and place of recovery cast a serious doubt upon the genuineness of the trap proceedings. Reliance was placed on the dictum in **Ved Prakash Maurya** (*supra*), wherein this Court held that material inconsistencies in the prosecution version regarding trap proceedings, timing, post-raid formalities and wash proceedings render the prosecution case doubtful and entitle the accused to benefit of doubt.

10.5. It was lastly argued that the prosecution has failed to establish the foundational facts necessary for drawing the statutory presumption under Section 20 of the PC Act by placing reliance on the dictum in **State of Punjab v. Madan Mohan Lal Verma, (2013) 14 SCC 153**, wherein the Apex Court held that before the burden shifts to the accused under Section 20 of the PC Act, the prosecution must first establish the foundational facts regarding demand and acceptance. Reliance was also placed on the dictum in **Neeraj Dutta** (*supra*) and **B. Jayaraj** (*supra*), to contend that in the absence of proof of demand, the statutory presumption under Section 20 cannot be invoked. Reliance was again placed on the dictum in **Har Swarup Verma** (*supra*), wherein this Court reiterated that where the chain of demand, acceptance and recovery is not established through credible and consistent evidence, the accused is entitled to benefit of doubt. It was, therefore, submitted that the impugned judgment of conviction and order on sentence are unsustainable in law and deserve to be set aside.

11. *Per contra*, the learned Additional Public Prosecutor submitted that the prosecution has successfully established the demand and acceptance of illegal gratification by the appellant through the testimonies of PW4, PW6 and PW9 coupled with the recovery of tainted currency notes and the positive hand-wash and pocket-wash proceedings. It was submitted that the contention of the appellant that the electricity meter could not legally be installed at PW4's premises is wholly immaterial in view of the settled legal position that the offence under the PC Act stands attracted upon

proof of demand and acceptance of illegal gratification irrespective of whether the public servant was actually capable of extending the alleged official favour and placed reliance on the dictum in **Trilok Chand Jain v. State of Delhi, (1975) 4 SCC 761**, wherein the Apex Court held that the question whether the accused was actually in a position to show favour to the complainant is not of significance once illegal gratification is demanded and accepted, which has been reiterated by the High Court of Kerala in **Dr. V. Sebastian v. City Hospital (P) Ltd., (1985) 57 Comp Cas 453**.

11.1. It was further submitted that merely because the alleged conversation regarding demand was not overheard by the trap laying officer (TLO) or the *panch* witness would not by itself render the prosecution case doubtful by placing reliance on the dictum in **State of U.P. v. Zakaullah, 1998 SCC (Cri) 456,** wherein it was categorically held that non-hearing of the conversation between the complainant and the accused by other witnesses is no ground to reject the prosecution case once recovery of tainted money from the accused stands established. It was argued that in the present case, the presence of the appellant at the relevant premises, the recovery of tainted currency notes and the positive wash proceedings sufficiently corroborate the prosecution version regarding demand and acceptance of bribe.

11.2. The learned prosecutor further submitted that the conduct of the appellant in throwing the tainted currency notes upon seeing the raiding party constitutes a strong incriminating circumstance against him by relying on the dictum in **Hazari Lal v. State (Delhi Administration), AIR 1980 SC 873**, wherein the Apex Court held that an attempt by the accused to throw away the tainted money upon arrival of the raiding party constitutes a relevant incriminating circumstance supporting the prosecution case. It was submitted that the said conduct of the appellant lends assurance to the prosecution version regarding conscious possession and acceptance of illegal gratification.

11.3. It was further pointed out by the learned prosecutor that the defence has failed to legally establish the alleged contradictions sought to be elicited from the prosecution witnesses. The learned prosecutor submitted that the procedure prescribed under Section 145 of the Indian Evidence Act, 1872 (the Evidence Act) for proving contradictions was not duly followed by the defence during trial and placed reliance on the dictum in **Tahsildar Singh v. State of U.P., AIR 1959 SC 1012**, to contend that unless contradictions are duly proved in accordance with law, the same cannot be read in evidence or relied upon by the defence. It is submitted that the alleged inconsistencies sought to be pointed out by the appellant, therefore, cannot materially discredit the prosecution case.

11.4. The learned prosecutor lastly submitted that the prosecution has duly established the foundational facts necessary for invoking the presumption under Section 20 of the PC Act. It was submitted that the recovery of tainted currency notes from the appellant, coupled with the positive hand-wash and pocket-wash proceedings conducted at the spot, clearly establish conscious acceptance of illegal gratification by the appellant. It was further contended that the defence has failed to furnish any plausible explanation regarding possession of the tainted currency notes and, therefore, the statutory presumption under Section 20 of the PC Act operates against the appellant.

12. Heard both sides and perused records.

13. 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.

14. I shall first briefly refer to the materials on record relied on by the prosecution in support of the case. PW4 submitted a written complaint, i.e., Exhibit PW4/A dated 29.11.1989 in the office of the Anti-Corruption Branch (ACB) in which he has stated thus: - He is a resident of House No. 349/5, Village Mangolpur Khurd, where he resides along with his wife and children. His

house does not have electricity. In an effort to secure electricity connection, he met Shri Sunil Kumar, Inspector, DESU, Sector No. III, Rohini, Delhi (the accused), about a month back, at which time, Inspector Sunil Kumar (the accused) proposed conducting a site inspection. After inspecting the aforementioned house, the accused instructed him to pay the security deposit and obtain a letter from the Chairman, DESU of his area and demanded a bribe of ₹2,000/-, asserting that the meter would be installed only upon receipt of the said payment (*2000 रूपये मुझे बतौर रिश्वत दो जब मीट्र लगेगा*). Thereafter on 09.10.1989, PW4 deposited the security deposit of ₹525/- *vide* receipt no. 462182 at the office of DESU in Rohini. He further stated that despite the payment of the security deposit, he had been making frequent visits to the office of DESU only to be harassed by Inspector Sunil Kumar (the accused), who continued to insist that the meter would not be installed until ₹2,000/- bribe was paid. (*और जब से DESU ऑफिस के चक्कर लगा रहा हूँ मगर श्री सुनील कुमार इंस्पैक्टर DESU मुझे बड़ा परेशान कर रहा है और कहता है कि जब ही मीटर लगेगा जब 2000*

रूपये दोगे). In the afternoon of 28.11.1989, when he met Inspector Sunil Kumar (the accused) again to plead for the installation of the meter, the latter responded by saying, "How many times do I have to tell you? Give ₹2,000/- and get the meter installed, otherwise I will reject the meter application." (*कितने बार बतलाना पड़ेगा 2000 रूपये दो और मीटर लगालो वरना मीटर को Reject कर दूंगा*) On this, when he responded, "Sunil Kumar Sahib, I am a poor man" (*सुनील कुमार साहब मैं तो गरीब आदमी हूँ*), the accused reduced his demand and responded by saying, "Fine, give ₹1,500/- by tomorrow afternoon, i.e., 29.11.1989, and I will come to your house and install the meter" (*ठीक है कल दिनांक 29.11.1989 को दोपहर तक 1500 रूपये दे देना और घर पर आकर मीटर लगवा दूंगा*) and hence, out of sheer compulsion, he agreed to the same, though he is against giving of bribe. (*जो मैंने मजबूरी समझकर हाँ भर ली वरना मैं रिश्वत लेने देने के खिलाफ हूँ*). PW4 further stated that that Shri Sunil Kumar (the accused) was scheduled to arrive at his house on the afternoon of 29.11.1989, to collect the ₹1,500/- bribe for the said installation.

14.1. PW4, when examined before the trial court, more or less stood by his case in Ext. PW4/A and deposed that after his initial meeting with the accused, someone came to his house and inspected it in his absence. Thereafter, when he again met the accused, the latter told him that a meter could not be installed in his house, but could instead be installed at a distance of about 100 feet in the lane. Subsequently, when PW4 met the zonal Executive Engineer, he also confirmed that the meter could only be installed at a distance of 100 feet in the lane and advised him to apply for the meter and thereafter meet the accused. Thereafter, when PW4 met the accused, the latter stated that he could sanction a meter, provided that the former pays some money for "*KHARCHA PAANI*". PW4 further deposed that on 27.11.1989, he met the accused again and that the accused again insisted that the former would have to pay ₹2,000/- as a bribe to the latter; otherwise, he would cancel the meter thereby forfeiting the security deposit made by PW4, upon which the former requested the latter to grant him three days' time. PW4 further deposed that though the accused initially demanded ₹2,000/- to be paid by 22.11.1989 11:00 A.M., he requested the accused to accept ₹1,500/- initially as he would not be able to arrange the whole amount. PW4 further deposed that on 29.11.1989, he went to the A.C. branch and lodged Ext. PW4/A complaint, in the presence of PW6, the *panch* witness. Thereafter, he provided ₹1,500/- in the denomination of ₹100/-, i.e., fifteen currency notes of ₹100/- each. PW4 further deposed in detail regarding the pre-trap proceedings which has been recorded *vide* Ext. PW4/B. PW4 further deposed that he was instructed to stay close to PW6, the *panch* witness and to speak with the accused in a manner that would allow the *panch* witness to overhear their conversation and witness the transaction and that PW6 was instructed to give a signal once he was satisfied that the money had been accepted as bribe by the accused.

14.2. PW4 further deposed that he, along with the entire trap team left for his house in a government vehicle, which was parked near a service station about 300 yards away. He along with the *panch* witness sat inside the house while the remaining members of the raiding party took positions near the boundary wall. By around 01:40 P.M., the accused arrived and entered the house and when he offered the latter tea, he refused and demanded the money by stating that he had other commitments. Thereafter, he took the money from his pocket to give it to the accused, he asked the latter as to where the electric meter would be installed. The accused took the money in his right hand and placed it in the right-side pocket of his pants and informed him that the meter would be installed in his uncle's house situated nearby and not in the lane. PW4 further deposed that the *panch* witness gave the pre-arranged signal by moving his hand over his head and upon reaching his uncle's house, officers from the ACB arrived there. He further deposed that the accused, on seeing the officials, took the money from his pocket and threw it on the ground. PW9, the TLO, disclosed his identity and challenged the accused, who became nervous and attempted to flee, however, he was successfully secured. PW4 further deposed that the *panch* witness was asked to pick up the currency notes and compare the serial numbers in the same with the numbers recorded in the pre-raid report. On comparison, the numbers tallied.

14.3. PW4 further deposed that the right hand of the accused was washed in a solution which turned pink. The right-side pocket of the pants of the accused was also washed in a freshly prepared solution, which also turned pink. PW4 further deposed that the two bottles of hand wash i.e., P16 and P17, and pant wash, i.e. P18 and P19 were labelled, sealed in front of him and seized *vide* Ext. PW4/D memo and Ext. PW4/E memo respectively and that he had affixed his signatures on the labels. He also deposed that the pants of the accused was seized *vide* Ext. PW4/F memo and the currency notes P1 to P15 were seized *vide* Ext. PW4/C seizure memo. At this juncture, the prosecutor sought permission of the trial court to put leading questions to the witness on the ground that he had deviated from his statement made before the police on the aspect of the initial demand. The request was allowed. On further examination by the prosecutor, PW4 deposed that he had been meeting the accused for about 15 days and that the conversation regarding the amount of ₹1,500/- had taken place on 27.11.1989 and 28.11.1989.

14.4. PW4, in his cross-examination, admitted that the meter was not installed based on his initial application. He had sent a lawyer notice, pursuant to which the accused called him and obtained a fresh application in the name of his son.The meter was ultimately issued in the name of his son. PW4 denied the suggestion that his first application was rejected because his house was situated in an unelectrified area. PW4 further deposed that he had met the Executive Engineer, who told him that the connection would not be granted in his name as he had caused the accused (Sunil Kumar) to be arrested. PW4 deposed that he was never informed that a meter could not be provided on the ground that his house was situated in an unelectrified area. PW4 further deposed that he had met the accused about 10 to 15 times before the date of the latter's arrest. He further deposed that he had borrowed ₹1,500/- from his brother-in-law, namely, Baljit Singh. According to PW4, 28.11.1989 was his weekly rest day and that no departure entry is made on the said day. PW4 further deposed that the accused had raised alarm when he was apprehended; however, no one came to the spot on hearing the cries of the latter as his house is situated away from the village and the area is not populated. The accused was apprehended inside a room in house no. 349/4. The currency notes were picked up from inside the said room. When the accused tried to run away, he was apprehended by PW9 and Head Constable Balbir Singh. PW4 further deposed that the hand wash and the pocket wash of the accused was taken by Head Constable Balbir Singh.

15. PW6 (the *panch* witness), U.DC, ITI, Malvia Nagar, Delhi, deposed that either on 29.11.1989 or 30.11.1989, he was

present on duty at the A.C. Branch as a *panch* witness. On the said day, PW4 had come to the ACB, and the latter's statement was recorded in his presence. He also testified regarding the pre-raid formalities done in the Office of the ACB, which according to him was recorded in Ext. PW4/B report in which he had signed. After completing the formalities, they proceeded to the house of PW4 situated in a village. He and PW4 went inside the house, while the other members of the raiding team took positions outside the house. Shortly thereafter, the accused arrived. PW4 offered the accused tea, which the latter declined. PW4 then took the money and gave it to the accused. The accused took the money in his hand. Then the accused and PW4 proceeded to the place where the connection was to be given, at which time, he gave the pre-arranged signal. The raid team came and proceeded to the place where the accused and PW4 had gone. However, he remained at PW4's house. PW6 further deposed that he was thereafter taken to the place where PW4 and the accused had gone and was shown the currency notes which had been recovered from the accused, which were checked and tallied. When the hand wash of the accused was taken at the ACB, the colour of the water turned pink. The pocket wash of the accused's pants also turned pink.

15.1. The prosecutor sought the permission of the trial court to "cross-examine" PW6 on the ground that he was resiling from his earlier statement made to the police. The request was allowed. On further examination by the prosecutor, PW6 deposed that the accused may have accepted the money in his right hand. However, he could not recall the same precisely. He further deposed that the house where the connection was to be given is situated opposite PW4's house, where he had gone along with PW4. PW6 denied having accompanied the raiding team to the house where PW4 and the accused had gone. He denied having stated to the police that the accused had kept the money in the right pocket of his pant. He denied having stated to the police that when the Inspector disclosed his identity, the accused had taken out the money from his pocket and thrown the same on the ground or that the accused had become nervous and had attempted to run away. He denied seeing the Inspector picking up the currency notes from the ground. However, PW6 admitted that the Inspector had handed over the currency notes and asked him to tally their numbers with the pre-raid report. He had tallied their numbers and found them to be the same. PW6 was unable to recall if the hand wash of the accused had been taken at the spot. However, he admitted that the hand wash and the pocket wash of the accused which turned pink had been transferred into two glass bottles, which were sealed and labelled and that he had affixed his signatures on the labels. PW6 admitted his signature on Ex. P20 pants. He also admitted that Exts. P1 to P15 are the currency notes recovered from the spot. PW6 further admitted his signature in Ext. PW4/G raid proceedings; Ext. PW4/C, Ext. PW4/D, Ext. PW4/E and Ext. PW4/F seizure memos. He also admitted that Ext. PW4/G had been prepared in his presence and that he had read the same. PW6 also admitted his signature in Ext. PW4/J seizure memo prepared relating to the scooter in which the accused had arrived at the spot. However, he deposed that he does not know whether the scooter had been seized on the same day. But he admitted that Ext. PW4/J was prepared in his presence and that he had read the same and thereafter signed it. PW6, in his cross-examination, denied the suggestion that the accused had not accepted the money and that no hand wash or pocket wash had been taken in his presence. PW6 also denied the suggestion that he had testified the incriminating parts at the instance of the police.

16. PW9, the TLO, broadly supported the prosecution case. He deposed that Ext. PW4/A complaint of PW4 was recorded in the presence of PW6, the *panch* witness, who was present in the ACB. PW4 and PW6, the *panch* witness, after being briefed, were sent ahead to proceed with the transaction with the accused. According to PW9, at about 11:45 A.M., the accused arrived on Scooter No: DBI 4868, and after parking the scooter outside the

house, he entered PW4's house, i.e. House No. 349/5. At about 01:50 P.M., PW6 gave the pre-arranged signal by moving his hand over his head and upon receiving the signal, he along with all the members of the raiding party reached the spot. He apprehended the accused with the assistance of Head Constable (HC) Bir Singh, disclosed his identity and challenged the accused. On seeing the raiding party, the accused threw the money on the ground. The notes were picked up from the ground by PW6, the *panch* witness and they were seized *vide* Ext. PW4/C memo. PW9 further deposed in detail regarding the post trap formalities.

16.1. PW9, in his cross examination, deposed that PW4 had arrived at the office of the ACB at about 09:00A.M. PW6, the *panch* witness, was present when the complaint of PW4 was recorded. According to PW9, he had applied phenolphthalein powder on the currency notes during the pre-raid formalities and that it was HC Balbir Singh who had given the demonstration. It was HC Balbir Singh who had taken the hand wash of the accused. But the same has not been mentioned in the post-raid report.

17. PW5, the Sanction Officer, deposed that he had gone through the police file and the judicial file of the case and after considering the allegations against the accused and the circumstances, granted sanction order *vide* Ext. PW5/A Sanction Order.

18. PW13, Inspector deposed that on 29.11.1989, he had accompanied the raiding party headed by PW9 TLO. He did not participate in the raid proceedings. He was standing away from the place. After the raid, he was entrusted with the investigation of the case at around 02:00 P.M., when PW9 handed over the accused, the case property and the documents prepared. He prepared Ext.PW13/A site plan at the instance of PW4 and PW6. After completing the formalities, including the recording of statements, deposited the case property in the *malkhana*, that is, bottles marked A1 and B1 along with pant *pullandas* and the scooter. Thereafter,

he went to the office of ACP, K.P. Singh, ACB, Police Station and entrusted bottles numbered B2 and A2 along with the sample seal, who kept it locked in his office almirah and sealed it. The ACP, retained the key of the almirah and handed back the seal to him. On 30.11.1989, he went to the office of the ACP on which day, K.P. Singh checked the almirah in his presence, which was found intact. The seal was broken open**,** the almirah unlocked and the bottles marked A2 and B2 handed back to him. He deposited the said samples in the office of the CFSL. As long as the case property remained in his possession, the same was not tampered with.

18.1. PW13, in his cross-examination, admitted that the office of ACP is not a notified *malkhana*.

19. The appellant/accused has found guilty of the offences punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the PC Act. It is now well settled that, to bring home an offence under Section 7 of the Act, the prosecution must establish:

(i) that the accused was a public servant; (ii) that there was a demand of illegal gratification; and (iii) that such gratification was voluntarily accepted by the accused as a motive or reward for doing or forbearing to do any official act. Similarly, for an offence under Section 13(1)(d) punishable under Section 13(2), the prosecution is required to prove that the public servant, by corrupt or illegal means or by abusing his position, obtained for himself or for any other person any valuable thing or pecuniary advantage. Crucially, the foundational requirement for both provisions is the proof of demand and acceptance of illegal gratification.

20. The learned senior counsel for the appellant/accused drew the attention of this Court to the charge framed by the trial court, which reads thus:- *"FIRSTLY that on 29-11-89 at about 1-50 P.M. you while working as Inspector DESU, Zonal Office Sector-III, Rohini, Delhi - a public servant in discharge of your official duties, by corrupt and illegal means or otherwise abusing your official position, demanded, accepted and obtained Rs. 1500/- at House No. 349/5, Mangolpur Khurd, Delhi as illegal gratification other than legal remuneration from Shri*

Jagwinder Singh s/o, Om Parkash, r/o. H. No. 349/5, Mangolpur Khurd, Delhi, in consideration for installation of electricity meter at his abovementioned residence and thereby committed an offence punishable under Section 7 of the Prevention of the Corruption Act, 1988 and within my cognizance".

(Emphasis Supplied)

21. Referring to the Charge, the argument advanced was that the materials on record show that the house bearing number 349/5 was situated in an unelectrified area and hence it was impossible for the appellant/accused to have acceded to the demand of PW4 for installing an electric meter at the aforesaid residence. In this regard, reliance was particularly placed upon an internal communication purportedly issued by the Executive Engineer stating that the premises was situated beyond the permissible distance from the existing electric mains and that steps were being taken to cancel the case and refund the security amount. However, the said documents were never formally proved or exhibited or even marked during the course of trial through any

competent witness. It is a settled law that a document is required to be produced and proved according to law to be called evidence. Whether such evidence is relevant, irrelevant, admissible or inadmissible, is a matter of trial (See **Hardeep Singh vs. State of Punjab, 2014 (3) SCC 92**). In the absence of formal exhibition and proof of the said documents, this Court cannot read the contents thereof as substantive evidence. Significantly, during the course of arguments, the learned Senior Counsel for the appellant also fairly confined his submissions primarily to the oral testimony of PW4 and did not seriously dispute that the said departmental documents had not been duly proved during trial. Consequently, no substantive benefit is lent to the appellant on the basis of such unproved DESU record.

22. Be that as it may, PW4 in his chief-examination admitted that the accused had informed him that the meter could not be installed in his house and that the same could be installed at a distance of about 100 feet in the lane. PW4 also admitted that he

had met the Executive Engineer of the zone, who also had informed him that the meter could be installed at a distance of 100 feet in the lane. The accused, when questioned under Section 313(1)(b) Cr.P.C. submitted that even after the raid, the meter was installed at the house of PW4's uncle. This aspect is not disputed by PW4. Even if no electric meter could be installed at house number 349/5, that alone would not automatically result in throwing out the entire prosecution case because the other materials on record also needs to be looked into, which I proceed to consider.

23. I have already referred to the testimony of PW4 in detail. PW4 stood by his version when cross-examined. Nothing was brought out in his cross-examination to disbelieve his testimony. It has not been shown that PW4 has an axe to grind implicate the accused or that there is any reason(s) for him to falsely against the accused. It is true that PW6, the *panch* witness, is partially hostile to the prosecution case. However, PW6

supported the prosecution case in all material particulars except to the extent that he was not present when PW9 apprehended the appellant/accused, at which time the accused is stated to have thrown the currency notes on the floor. But PW6 admits all the other aspects of the prosecution case. He admitted that he along with the raiding team and PW4 had proceeded to the house of PW4, to which place the accused had also come. PW6 also admitted that when the accused arrived at the house of PW4, the latter had offered him tea which the appellant/accused declined, and thereafter PW4 had taken the money and handed it over to the accused. It is true that PW6 deposed that he had not accompanied PW4 and the accused to the house situated opposite the house of PW4 for the purpose of installation of the electric meter. He also deposed that he had not seen the accused being apprehended by PW9 or the accused, on seeing the raiding party, throwing the currency notes on the floor. However, PW6 admitted that he was later taken to the said house and that on the instructions of PW9, he had checked the serial numbers of the currency notes handed over to him and that the same had tallied with the ones recorded in the pre-raid report. He also admitted his signatures in the documents prepared by PW9 contemporaneously.

24. Another pertinent aspect to be noticed is that PW6 in his cross-examination denied the suggestions put to him by the defence counsel that the accused had not accepted the money and that no hand wash or pocket wash had been taken in his presence. This testimony of PW6 has to be read along with the testimony of PW4 and PW9. The accused has no explanation as to why he went to the house of PW4 on the said day. If it was impossible for the electric meter to have been installed at the house of the accused, and if he had already informed PW4 about the same, the question that arises is as to why he went to the house of PW4 on the said day. The accused has no explanation whatsoever for the same. Merely because PW6 partially turned hostile is no reason to disbelieve his entire testimony. It is well settled law that the

testimony of a witness is not liable to be discredited *in toto* merely because he does not support the prosecution case on certain aspects. The portion of his testimony which inspires confidence and finds corroboration from other relatable evidence can be always relied on. [See **State of U.P. v. Ramesh Prasad Misra and Anr., (1996) 10 SCC 360**]. The testimony of PW6 has to be read along with the testimony of PW4 and PW9.

25. It is true that no independent witnesses were examined to establish the prosecution case. However, no materials/evidence has come on record to show that any independent witnesses were present in and around the place of occurrence. According to PW4 the accused, on being apprehended by PW9, had raised alarm, but nobody came as the place of occurrence is situated away from the village and not in a thickly populated area.

26. The contention of the appellant that the conversation regarding the demand was not overheard by PW6 or the other members of the raiding party also does not persuade this Court to

discard the prosecution case. As held in **Zakaullah** (*supra*), merely because the conversation between the complainant and the accused was not overheard by independent witnesses would not be a ground to reject the prosecution case once recovery of tainted money from the accused is established.

27. The non-examination of HC Balbir Singh is also of no consequence in this case as evidence has to be weighed and not counted. The complainant in a case of this nature is not an accomplice and the question to be considered is whether his testimony can be relied on or believed to substantiate the prosecution case of demand of the bribe. It is not always necessary that his testimony has to be corroborated by independent evidence. The hand wash and pocket wash proceedings stood duly proved through PW4, PW6 and PW9. The relevant bottles and exhibits were produced before the trial court and identified by the witnesses. Merely because one member of the raiding team was not examined would not *ipso facto* render the entire prosecution

case doubtful when the material aspects of the trap proceedings otherwise stand established through cogent evidence.

28. The reliance placed by the appellant on the dicta in **B. Jayaraj** (*supra*), **Neeraj Dutta** (*supra*), **Madan Mohan Lal Verma** (*supra*), and **Rajesh Gupta** (*supra*) also does not advance the appellant's case in the peculiar facts of the present matter. As held in **Neeraj Dutta** (*supra*) the Court has the discretion to presume facts on a case-to-case basis when the foundational facts are established. There can be no quarrel with the proposition laid down in the aforesaid decisions that proof of demand is *sine qua non* for conviction under the PC Act and that mere recovery of tainted money is not sufficient in the absence of proof of demand and acceptance. However, unlike the cases relied upon by the appellant, in the case on hand, there exists direct evidence of demand through the testimony of PW4, which receives substantial corroboration from the surrounding circumstances, recovery of tainted money, positive wash proceedings and the testimony of

PW9. Therefore, the foundational facts regarding demand and acceptance stand duly established. Similarly, the reliance placed by the appellant on the judgments in **Ved Prakash Maurya** (*supra*) and **Har Swarup Verma** (*supra*) is distinguishable on facts. In the said cases, the prosecution evidence regarding demand itself was found to be doubtful and there were serious deficiencies regarding the authority of the accused to process the alleged work coupled with material inconsistencies in the prosecution case. In the case on hand, however, the prosecution has succeeded in establishing through reliable oral and documentary evidence that the appellant had demanded and accepted illegal gratification from PW4 in connection with the installation of the electricity connection. The mere fact that there existed certain technical or procedural issues regarding the exact place of installation would not efface the evidence regarding demand and acceptance.

29. Here it is also apposite to note that PW9, when examined before the trial court, deposed that Ext. P16 to P19

bottles contain white liquid and the court also observed the same. As held in **Ram Naresh Pandey v. State**, **2013 SCC OnLine Del 2751**, that fading or disappearance of pink colour over a period of time is a natural phenomenon and does not in any manner discredit the prosecution case and that phenolphthalein, being an acid-base indicator, turns pink only in an alkaline medium when the pH value exceeds 8, and may subsequently become colourless if the pH level falls below 8 due to passage of time or change in chemical composition of the solution. Mere absence of pink colour at a later stage does not negate the fact that the solution had turned pink at the time of trap, particularly when contemporaneous evidence and Ext. PW8/A CFSL report clearly establish the same.

30. At this stage, it also becomes relevant to notice that the appellant, in his statement recorded under Section 313 Cr.PC., merely denied the prosecution allegations and raised the defence that the meter could not have been installed at PW4's house as it fell within an unelectrified area. Though the burden upon the

accused to rebut the statutory presumption under Section 20 of the PC Act is not as onerous as that cast upon the prosecution, the accused is nevertheless required to place on record some material to probabilise his defence. In the present case, except for bare denial, no convincing explanation has been furnished by the appellant regarding his presence at the scene of occurrence; the recovery of tainted currency notes and the hand wash and pocket wash turning pink.

31. The learned Senior counsel's attempt to point out contradiction(s) in the testimony of the prosecution witnesses regarding the manner of recovery, throwing of the currency notes, etc., can also not succeed as the contradictions were never duly proved as per the procedure contemplated in Section 145 of the Evidence Act. [See **Tahsildar Singh** (*supra*); **Satpal v. Delhi Administration, 1976 (1) SCC 727 and Delhi Administration. v. Lakshman Kumar 1985 KHC 741: (1985) 4 SCC 476**).

32. Yet another argument advanced is regarding the discrepancy relating to the time at which the accused reached the scene of occurrence. According to PW4, the accused arrived at his house by 01:40 P.M. However, PW9 deposed that the accused arrived at about 11:45 A.M. This was pointed out as another major defect in the prosecution case. It is true that such a discrepancy is seen. However, PW9 also deposed thatPW6 had given the signal at 01:50 P.M., pursuant to which the accused was apprehended and remaining formalities completed. In the facts and circumstances of the case on hand, this discrepancy regarding the time alone cannot be a ground to throw out the entire prosecution case in the light of the testimony of PW4, PW6 and PW9, whom I find no reasons to disbelieve.

33. It was also pointed out by the learned Senior counsel for the appellant/accused that no verification seems to have been done on the complaint of PW4 and that PW9 and team had acted in

haste even without conducting any preliminary enquiries regarding the genuineness of the complaint.

34. PW9 deposed that PW4 had reached the office of ACB at 09:00 A.M. The exact time at which the formalities were completed or the exact or approximate time at which PW4 and PW6 along with raiding team left the office of the ACB is not borne out from the materials on record. Therefore, I do not find any materials on record to conclude that the formalities were completed in haste.

35. Once the prosecution proves the foundational facts regarding demand and acceptance of illegal gratification, the statutory presumption under Section 20 of the PC Act stands attracted against the appellant/accused. The appellant herein has failed to rebut the said presumption either through cross-examination of prosecution witnesses or through independent defence evidence. Consequently, this Court finds no reason(s) to disbelieve the prosecution version. In view of the aforesaid

discussion, this Court is of the considered opinion that the trial Court has correctly appreciated the evidence on record and has rightly recorded the conviction of the appellant. The findings do not suffer from any perversity or illegality warranting interference in appellate jurisdiction.

36. In the result, the appeal, *sans* merit, is dismissed.

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

CHANDRASEKHARAN SUDHA
(JUDGE)

MAY 14, 2026
p'ma/mj