2026:DHC:2118

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

% ***Judgment Reserved on: 11.03.2026***
Judgment pronounced on:16.03.2026

\+ **CRL.A. 846/2004**

MOHD. YAMIN @ YAMEEN KHAN .....Appellant

Through: Mr. Yudhishtar Kahol with Mr. Kunal Kahol and Mr. Nikhil Kahol, Advocates.

versus

STATE THR. C.B.I .....Respondent

Through: Mr. Kamal Kant Goel, SPP with Ms.Jyoti Goel, Advocate.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374 of the Code of Criminal Procedure, 1973, (the Cr.P.C.) the sole accused, in C.C. No. 106/2001 on the file of the Special Judge, Delhi, assails the judgment dated 06.10.2004 and order on sentence dated 12.10.2004 as per which he has been convicted and sentenced for the offences punishable under Section 7 and Section 13(2) read

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

2. The prosecution case is that the accused, while posted as Assistant Manager (Accounts) at ITDC, Hotel Samrat, New Delhi, on 29.11.1996 demanded illegal gratification of ₹500/- from PW3, whose taxies were attached with the Hotel Samrat on panel basis, for disbursing the payment of taxi bills, which had already been passed and approved by the General Manager at ITDC, Hotel Samrat, New Delhi.

3. Sanction for prosecution was accorded by PW2, the then Vice President (Credit and Collection), ITDC, New Delhi, *vide* Ext. PW2/A.

4. Crime no. RC 83(A)/1996, dated 29.11.1996 was registered on the basis of PW3/A complaint of PW3. After completion of investigation by PW10, a charge-sheet dated 29.05.1997 was filed against the appellant 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 20.02.1998, framed a Charge under Section 7 and Section 13(2) read with Section 13(1)(d) 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 11 were examined and Exhibits PW1/A-D, P1-56, PW2/A, PW3/A, PW4/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.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 due to personal and union rivalry and at the instance of interested persons. According to him, PW3, who was

related to union leader one S.S. Upadhyaya, had a grudge against him as he had refused to process and release payments in violation of the prescribed rules and procedures of ITDC. PW3 wanted early release of certain bills and payments which were not due at the relevant time, and when he did not accede to such demands, a false complaint was lodged against him. He further submitted that he had always discharged his duties strictly in accordance with the departmental rules and guidelines and that he never came into direct contact with taxi operators, as their bills were processed through the prescribed channel. He asserted that during his long service of about 26 years, no complaint of corruption or misconduct had ever been made against him and that his integrity and efficiency had been recognized by the department, even earning him honorarium and responsible assignments. The investigation has been unfair and biased; the evidence had been fabricated and manipulated. He denied having demanded or accepted any bribe or illegal gratification from PW3 and claimed that he had been made a victim of a conspiracy hatched by interested union elements to settle personal scores.

8. On behalf of the accused, DWs. 1 to 7 were examined. No documentary evidence was adduced.

9. On consideration of the oral and documentary evidence on record and after hearing both sides, the trial court, *vide* the impugned judgment dated 06.10.2004, held the accused guilty of the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the PC Act. *Vide* order on sentence dated 12.10.2004, the appellant has been sentenced to undergo rigorous imprisonment for a period of six months along with fine of ₹5,000/-, and in default of payment of fine, to undergo simple imprisonment for three months for the offence punishable under Section 7 of the PC Act, and to rigorous imprisonment for one year along with fine of ₹5,000/-, and in default of payment of fine, to undergo simple imprisonment for three months for the offence punishable under Section 13(2) read with Section 13(1)(d) of the

PC Act. The sentences have been directed to run concurrently. Aggrieved, the accused has preferred this appeal.

10. The learned counsel for the appellant assailed the impugned judgment and order of sentence, submitting that the conviction recorded by the trial court is contrary to the evidence on record and is based upon conjectures and surmises rather than a proper appreciation of the material placed before the Court. It was contended that the prosecution case suffers from serious procedural irregularities which cast a grave doubt on its authenticity. In this regard, the learned counsel pointed out that though the FIR in the present case was allegedly registered on 29.11.1996, the same was received in the Court of the learned Special Judge only on 02.12.1996 at about 4:00 PM. According to the learned counsel, this unexplained delay of nearly four days in forwarding the FIR to the Court strikes at the root of the prosecution case and indicates that the documents relied upon by the prosecution could have been prepared subsequently. It was

further submitted that the handing over memo, which was allegedly prepared prior to the trap proceedings, does not bear the Crime number, thereby lending support to the defence contention that the prosecution version was reconstructed at a later stage.

10.1. It was further submitted that the testimony of the prosecution witnesses suffers from serious contradictions which render the prosecution version unreliable. It was contended that the evidence of PW7, Manager (Vigilance and Security), shows that he was called by the CBI officials at about 3:30 PM on the date of the alleged incident and when he reached the office of the accused he found the CBI officers already holding the accused by his wrists. According to the learned counsel, this statement clearly contradicts the prosecution case that PW3 and shadow witness had again approached the accused at about 5:00 PM and that the accused was apprehended only after the alleged acceptance of the bribe amount thereafter. Such contradiction regarding the time of apprehension of the accused, it was argued, seriously undermines the prosecution story and creates a substantial doubt regarding the manner in which the trap proceedings were allegedly conducted.

10.2. The learned counsel further submitted that the evidence on record indicates that the phenolphthalein powder used during the trap proceedings was already available in the room of the investigating officer and the demonstration was conducted there prior to the trap. According to the learned counsel, this circumstance raises a possibility that the powder might have been carried to the spot beforehand and that the alleged recovery of tainted currency notes was manipulated. The learned counsel further contended that PW1, the shadow witness had stated that PW3 was provided with an audio cassette recorder to record the conversation between PW3 and the accused. However, no such recording was produced before the Court, which creates a serious doubt regarding the prosecution version of the alleged demand and acceptance of bribe. It was also argued that although several persons were present in the office premises and the surrounding area, no independent witness from the spot was joined in the trap proceedings, thereby casting doubt on the fairness and transparency of the investigation.

10.3. It was next submitted that the prosecution failed to establish the very motive attributed to the appellant for allegedly demanding illegal gratification. According to the learned counsel, the evidence on record clearly demonstrates that PW3's bills had not been approved or passed by the competent authority on the date of the alleged incident and therefore the payment could not have been released on that day in any event. It was argued that the departmental procedure required the approval and signature of the General Manager before any payment could be made and the evidence of the defence witnesses as well as the departmental records clearly indicates that such approval had not been granted at the relevant time. The learned counsel also pointed out that even according to the evidence on record, some of the bills were still under process and were not due for payment on the date of the alleged trap. In these circumstances, it was contended that there was no occasion whatsoever for the appellant to demand any bribe from PW3 for clearing those bills.

10.4. It was also submitted that the testimony of PW3 itself is unreliable and inconsistent. It was pointed out that PW3 claimed that he required the payment urgently for the marriage of his daughter and relied upon a wedding card in support of this assertion. However, the said wedding card did not contain PW3's name as the father of the bride and in fact related to another person, namely, Sita Ram Dixit, whereas PW3's father's name is Ram Singh. According to the learned counsel, this discrepancy clearly demonstrates that the story put forward by PW3 regarding the urgency of payment for a family marriage was false and fabricated. It was further submitted that PW3 himself admitted that on earlier occasions his bills had been cleared by the appellant without any demand of bribe. This admission, according to the learned counsel, clearly indicates that there was no prior instance of the appellant demanding illegal gratification from PW3 and the allegation made in the present case was therefore inherently improbable.

10.5. The learned counsel also drew the attention of the Court to the circumstances prevailing on the date of the alleged incident and submitted that 29.11.1996 was a salary disbursement day in the office of the accused. According to the learned counsel, on such days the accounts staff remain engaged in disbursing salary to the employees and no other payments are processed. This circumstance, it was argued, further makes the prosecution story doubtful, since the appellant would have had no occasion to demand a bribe for clearing PW3's bills when those bills were not even due for payment and the office was engaged in salary disbursement work.

10.6. Lastly, the learned counsel for the appellant assailed the investigation conducted in the present case and submitted that the same was wholly defective and perfunctory. It was pointed out that

PW10, the Investigating Officer, admitted during cross-examination that he did not examine any witness to verify whether PW3's bills had actually been passed by the competent authority. The Investigating Officer admitted that he merely recorded the statements of certain witnesses as per their narration without conducting any independent verification regarding the departmental procedure for clearance of bills. It was also submitted that the Investigating Officer did not conduct any inquiry regarding the wedding card relied upon by PW3 and did not verify whether the alleged circumstances stated in the complaint were correct. According to the learned counsel, such lapses in the investigation clearly demonstrate that the prosecution failed to conduct a fair and proper investigation in the matter. In view of these cumulative circumstances, the learned counsel for the appellant submitted that the prosecution failed to establish beyond reasonable doubt the essential ingredients of demand and acceptance of illegal gratification and therefore the appellant was entitled to the benefit of doubt and consequent acquittal.

11. *Per contra*, the learned Special Public Prosecutor supported the impugned judgment and submitted that the trial Court had correctly appreciated the evidence on record and had rightly convicted the appellant. The attention of this Court was drawn to the legal position under Section 7 of the PC Act as it stood in the year 1996 prior to the amendment of 2018. It was submitted that Explanation (d) to Section 7 clearly provides that even where a public servant receives gratification as a motive or reward for doing something which he does not intend to do or which he is not in a position to do, the offence would nevertheless fall within the ambit of the said provision. It was contended that, even assuming that PW3's bills had not matured for payment and therefore there was no occasion for the appellant to demand a bribe, that circumstance would not exonerate the appellant, since acceptance of gratification as a motive or reward would still

squarely attract Section 7 of the Act. It was submitted that if the bills were indeed not payable, the appellant could have simply informed PW3 that payment could not be made at that stage, and the fact that he instead demanded money clearly attracts the ingredients of the offence.

11.1. It was next submitted regarding the alleged delay in forwarding the FIR to the Court that the contention is misconceived and it was pointed out that the incident occurred on 29.11.1996, which was a Friday, and the intervening days included Saturday and Sunday. The FIR was received in the Court on Monday, i.e., 02.12.1996. It was further submitted that immediately after the apprehension of the accused he was produced before the trial court within the legally stipulated time and the relevant documents including the copy of the FIR were placed before the Court. Therefore, the delay sought to be highlighted by the defence does not suggest any manipulation or infirmity in the prosecution case.

11.2. It was submitted that according to the prosecution case, no tape recording instrument was used for recording the conversation between PW3 and the accused. PW5 who had partially resiled from the prosecution version made a reference to such a device; however, it was argued that if the defence sought to rely upon such a circumstance, it was incumbent upon them to establish the existence and contents of such a recording. It was further submitted that the defence did not even put any specific suggestion to the prosecution witnesses suggesting that the conversation between PW3 and the accused was different from what has been deposed by the witnesses. In these circumstances, the appellant cannot derive any benefit from the alleged reference to a tape recording device.

11.3. Further, it was contended that the argument advanced by the defence regarding the presence of other currency notes belonging to the accused, particularly the salary notes recovered from him, is devoid of merit. It was pointed out that the tainted currency notes of ₹500 consisting of five currency notes of the denomination each of ₹100 each were treated with phenolphthalein powder and their numbers had been noted in the handing over memo prepared prior to the trap. These tainted notes were recovered from the possession of the accused. The presence of additional notes of ₹10/- and ₹5/- denomination, which may have represented the personal money of the accused including salary received on that day, does not in any manner dilute the prosecution case. It was submitted that the dipping of these additional notes in the sodium carbonate solution was only to ascertain whether they had come into contact with the tainted GC notes when they were kept together in the same pocket, and the fact that the solution turned pink confirmed that the tainted notes had indeed come into contact with the other currency notes recovered from the pocket of the accused.

11.4. The learned Prosecutor further submitted that the argument that PW3's bills had not matured for payment is equally without merit. It was pointed out that the trial court had considered this aspect in detail and reference was made to paragraph 57 of the impugned judgment. It was submitted that even in the cross-examination of the prosecution witnesses, the defence itself had suggested that when PW3 met the accused for the second time, the accused had informed him that at least one bill of about ₹9,000 had been sanctioned. According to the learned Special Public Prosecutor, this suggestion itself indicates that some amount had already been sanctioned and the defence cannot now be permitted to contend that no bill whatsoever had matured for payment. In any event, even if the bills had not matured, the acceptance of gratification would still fall within the ambit of Section 7 of the PC Act.

11.5. It was next contended that whether PW3 referred to the marriage of his daughter or his sister is wholly irrelevant to the determination of the guilt of the accused, as PW3 might have relied upon the urgency of a marriage in the family merely as a reason to press for early payment of his bills. It was further submitted that any discrepancy regarding the colour of the pant worn by the accused is only a matter relating to the fallibility of human memory, particularly when the pant itself was shown to the witnesses during trial and duly identified by them. As regards the absence of pink colour on the pant pocket, it was submitted that when an object containing phenolphthalein powder is dipped into a sodium carbonate solution, it is the solution which changes colour and turns pink and not necessarily the object itself. Therefore, the said argument has no force in law.

11.6. Lastly, the learned Prosecutor submitted that the prosecution case is fully supported by the testimony of PW3 and PW 11, the trap laying officer, and is corroborated by the recovery of the tainted currency notes as well as the positive phenolphthalein test. Reliance was placed upon the decision of the Supreme Court in **State of U.P. v. G.K. Ghosh, (1984) 1 SCC 254**, to submit that a citizen ordinarily does not approach the vigilance authorities lightly to arrange a trap against a public servant, as doing so involves considerable inconvenience, effort and risk. It was further submitted that the trap laying officer cannot automatically be treated as an unreliable witness merely because he forms part of the raiding party, since it cannot ordinarily be presumed that a police officer would fabricate evidence to falsely implicate an innocent public servant. According to the learned Special Public Prosecutor, where the testimony of PW3 and the trap laying officer is supported by circumstantial evidence such as recovery of tainted currency notes and positive chemical test results, the Court can safely rely upon such evidence even if certain witnesses do not fully support the prosecution case. On the strength of the aforesaid submissions, it was contended that the prosecution had successfully established the demand and acceptance of illegal gratification by the appellant beyond reasonable doubt and that the trial court had rightly appreciated the evidence on record while convicting the appellant, and therefore the present appeal deserves to be dismissed.

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 evidence on record relied on by the prosecution in support of the case. The demand in this case is alleged to have taken place on 29.11.1996 and the trap laid on the very same day. PW3 submitted a written complaint, that is, Exhibit PW3/A on 29.11.1996 in the office of the CBI in which he has stated thus: - He has two taxis bearing registration of the DL-1 series which have been operating on a panel basis with ITDC (India Tourism Development Corporation) for about two years. His taxi bills for the past few months amounting to approximately ₹32,000/- were pending for payment with ITDC. Although the said bills had already been passed, the accused/appellant, who was

working as Accounts Officer, ITDC and was posted in the basement office of Hotel Samrat, demanded ₹500/- from him as illegal gratification for releasing the payment of the said bills. On the morning of 29.11.1996, when PW3 met the accused and requested for the payment of his pending bills, the accused demanded ₹500/- and directed him to meet him again in the afternoon with the said amount, assuring that only thereafter the payment of the bills would be processed. According to PW3, he did not wish to pay the bribe demanded by the accused and therefore approached the CBI seeking appropriate legal action against the latter.

14.1. PW3, when examined before the trial court deposed that in November 1993, he was operating a travel agency and had two taxis on the panel of the ITDC. For several months, his bills regarding the two taxis, totalling approximately Rs. 41,000/-, remained pending for payment. Although these bills had already been sanctioned and sent for payment by the General Manager of

ITDC, the accused, who was the Manager of Accounts, withheld the payment. According to PW3, on the morning of 29.11.1996, PW3 met the accused at his office and requested the release of his pending payments, explaining that he required the funds for his daughter's marriage. In response, the accused demanded a bribe of ₹500/- to process the payment and instructed PW3 to pay the amount that same day. Thereafter, PW3 proceeded to the CBI office, where he met with the SP (CBI/ACB) and narrated the facts of the matter. PW3 then lodged Exhibit PW3/A written complaint. Subsequently, the SP summoned PW11 Inspector and handed over the complaint to him. PW11 then took PW3 to his room and requisitioned two independent witnesses, namely, PW1 and PW5.

14.2. PW3 deposed in detail regarding the pre-trap proceedings. PW3 further deposed that the team departed from the CBI office in official vehicles at approximately 3:30 PM, arriving near the Samrat Hotel Garage. Shortly thereafter, where vehicles were parked at a discreet distance. Acting on the directions of

PW11, the TLO, he along with PW1, the shadow witness, entered the Samrat Hotel Garage building to reach the office of the accused. Other members of the raiding party took up their designated positions outside the garage. Upon arrival at the office, he saw the accused disbursing salaries to the staff. The accused informed him that he was busy and instructed him to return once the salary distribution was completed. He along with PW1 then exited the office and informed the CBI officials of the delay. PW3 further deposed that at around 5:00 PM, he and PW1 returned to the office of the accused. Inside the office, the accused inquired if he had brought the money ("*Paise laaye ho*"), to which PW3 confirmed in the affirmative ("*Laye ha sir*"). PW3 then produced the tainted ₹500/- from his pocket and extended it to the accused. The accused accepted the currency with his left hand, transferred it to his right hand, and placed the money into the right-hand pocket of his pant. The accused questioned PW3 regarding PW1's identity, to which PW3 introduced PW1 as his son. PW1 gave the pre-arranged signal to the CBI team, who then entered the office. PW11 and another Inspector (Shri Negi) apprehended the accused by his arms. PW11 disclosed his identity. Subsequently, PW7, a security officer, was summoned to the scene, and a manager from the office of the accused also arrived. Following the apprehension of the accused, PW11 conducted a search of the accused's pant pocket, resulting in the recovery of ₹540/-, comprising five ₹100/- notes, four ₹10/- notes, and two ₹5/- notes. PW3 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 fingers in the same. The inner lining of the right trouser pocket worn by the appellant/accused also turned pink on being dipped in the solution.

14.3. PW3, in his cross-examination, admitted that the accused had cleared previous taxi service bills without demanding any bribe; however, he clarified that those prior bills were generally for smaller amounts, between ₹8,000/- and ₹10,000/- per month. There was no fixed timeline for bill clearance, with some settled within three months and others taking four to six months. PW3 further deposed that the accused had demanded a bribe specifically for the clearance of one bill for ₹9,144/- and several other bills totalling approximately ₹32,000/-, though he could not confirm the exact total without reviewing the documents. Upon being shown Exhibit P44, a bill for July 1996 for ₹9,611.60, PW3 explained the discrepancy in his complaint by stating that the figure of ₹9,141/- cited therein was the final amount for which ITDC had actually passed the bill. PW3 denied the suggestion that the bills had not been approved by the relevant authority at the time the complaint was filed.

14.4. PW3 further deposed that he proceeded to the office of the CBI on his own initiative on the morning of November 29 without prior consultation. Although he had previously visited the CBI office for taxi assignments, he was not personally acquainted with the SP and was directed to the SP's office by the reception desk. He denied that the complaint was written under dictation of the SP. According to PW3, prior to approaching the CBI on 29.11.1996, he reported to one Sunderam and the General Manager that the accused was withholding payment of the approved bills in expectation of a bribe; they informed him that their duty concluded with the clearance of the bills and that they could provide no further assistance. Regarding his previous professional interactions with the CBI, PW3 deposed that his taxis were used solely for transporting officers between residences and offices and that he could not recall if senior CBI officers had ever used his services and specifically denied that PW10, PW11, or the DSP had ever travelled in his taxis.

14.5. Between 03:30 PM and 05:30 PM, he, PW1, and CBI officials remained in or around the canteen while the accused was busy. PW3 further deposed that no audio recording device was provided by the CBI to record the conversation. After apprehending the accused, PW7 was called to witness the recovery of the tainted money from the accused. PW3 denied the suggestions that the money was forced into the accused's pocket without a demand, or that the hand washes initially failed necessitating the use of hot water from the canteen to produce a pink reaction. He identified a black pair of trousers (Ex. P68) as the one worn by the accused at the time of the incident, despite having previously described them as chocolate-coloured, and noted that the inner lining of the pocket was white. The accused was required to remove the trousers inside his cabin for the pocket wash, though PW3 could not recall where a replacement pair was sourced from. The entire operation at the Samrat Hotel Garage concluded at approximately 6:30 PM.

14.6. PW3 deposed that from the spot he went to his residence and the accused was taken to the CBI Office and that he did not accompany the CBI team from the spot to the house of the accused. The payments of his bills were received by him two or three months after the raid. PW3 deposed that he did not know whether his bill of ₹9,142/- had been approved for payment on 28.11.1996 and whether on the same day the papers were put up before the accused and that the accused cleared the file for payment. PW3 denied the suggestion that he was not present in Delhi on 28.11.1996 or that he did not visit the office of the accused on that day. He also denied the suggestion that PW11 and DSP Ramnish were previously known to him and that he lodged the report at their instance.

14.7. PW3 admitted that M.S. Upadhya is his maternal uncle. His uncle was not present during the raid proceedings. PW3 denied the suggestion that on the date of the raid he had rung up M.S. Upadhya from the room of Y.S. Verma, Senior Manager (Technical), Ashok Tours & Travels. He also denied the suggestion that during the trap proceedings M.S. Upadhya had come to the spot and talked to Kamudi, SP, and the General Manager of Ashok Tours & Travels. PW3 further denied the suggestion that from the spot of the raid, the members of the raiding party including himself and the accused had gone to the house of the accused in his taxi bearing registration No. DL-1Y-307. He also denied the suggestion that a search-cum-observation memo was prepared at the house of the accused and that he had signed the same as a witness.

15. PW1, the shadow witness, deposed that on 29.11.1996, he, along with PW5, visited the CBI office at around 1:30 PM on the instructions of the Executive Engineer. There, they met PW11, who introduced them to PW3. PW3's complaint was shown to them, and they questioned PW3 to satisfy themselves about the allegations contained therein. He was directed to accompany PW3 as a shadow witness to hear the conversation and watch the proceedings. He was further directed to give a signal to the CBI team by placing both his hands on his hair in the event of acceptance of bribe by the accused. The TLO directed PW3 to introduce him as the younger son of the latter. PW3 was given a

audio cassette recorder to record the conversation. According to PW1, the trap party left the CBI office at about 3:30 PM and reached Samrat Hotel at around 3:50 PM. On the directions of PW11, he along with PW3 went into the building of Samrat Hotel to meet the accused while the other members of the raiding party remained outside. They entered the office of the accused at around 4:00 PM. The accused told them to meet him after 5:00 PM. They again went to the office of the accused at around 5:10 PM and the following conversation took place outside the room of the accused:

PW3: *Mere bills ka kya hua*,

Accused: *Ha paise laye ho*,

PW3: *Saab laya hun*.

15.1. After entering the room, the accused again asked if PW3 had brought the money ("*paise laaye ho*") and PW3 replied that he had brought five hundred rupees ("*Han Saab, Paach So rupaye*"). The accused then asked to hand it over ("*lao de do*").

Thereafter, PW3 passed on the tainted ₹500/- to the accused, asking him to count it ("*gin lo*"). The accused counted the tainted money with both his hands and kept the same in the right pocket of his trousers. Thereafter, he came out of the office and gave the pre-arranged signal to the CBI team by placing both his hands on his head. The CBI team rushed into the office of the accused and apprehended him by his wrists. PW11 disclosed his identity and told the accused that he was arrested on the charge of having accepted bribe from PW3. PW11 directed PW5 to search the accused. On search, PW5 recovered the tainted currency notes to the tune of ₹500/- from the right pocket of the pant of the accused. Besides that, four currency notes of ₹10/- denomination each and two currency notes of ₹5/- denomination each were also recovered from the accused. PW5 and Inspector Ramnish of the CBI team thereafter compared the numbers of the aforesaid five currency notes with the numbers already noted in the handing over memo, and confirmed that the recovered currency notes were the same.

The accused was made to dip the fingers of his right hand in a glass of water, upon which the water turned pink. The right hand wash was transferred into a clean empty bottle, its mouth was closed, wrapped with a piece of cloth, and sealed with the seal of CBI.

15.2. At this juncture, the prosecutor is seen to have sought permission to "cross-examine" PW1 on the ground that he had resiled from the statement made to the CBI. The request was allowed and on being further examined by the prosecutor, PW1 admitted that his statement under Section 161 Cr.P.C. had been recorded by CBI. He further admitted that during the pre-raid proceedings, the demonstration was given by Inspector Kishan Singh Negi, and that during the demonstration, the currency notes were treated with phenolphthalein powder and that sodium carbonate powder was dissolved in water to prepare a colourless solution. He also admitted that for the purpose of demonstration, PW5 was made to touch the treated notes and dip his fingers in the sodium carbonate solution, which turned pink.

15.3. PW1 deposed that the entire conversation between PW3 and the accused took place in the office of the accused and that he could not recall the precise nature of the conversation verbatim but had conveyed its gist in his examination-in-chief. He denied the suggestion of the prosecutor that no tape recorder had been given to PW3 for recording the conversation. He admitted that the hand washes and trouser pocket wash of the accused were taken in sodium carbonate solution and not in plain water. He also admitted that a wash of the currency notes of ₹10/- and ₹5/- denomination recovered from the right pocket of the trousers of the accused was also taken in sodium carbonate solution, which similarly turned pink, and was transferred into a clean bottle, sealed with the seal of CBI, and properly labelled. The bottle of the said wash is Ex. P69 and its corresponding cloth wrapper is Ex. P70, both bearing PW1's signatures. PW1 denied the suggestion that he had been won over by the accused and had therefore given a distorted version.

15.4. PW1 in his cross examination also fully supported the prosecution case. PW1 admitted that his testimony given in examination-in-chief regarding a tape recorder being given to PW3 was incorrect, attributing the lapse to nervousness as it was his first appearance in a court of law. He clarified that during the pre-raid proceedings, some discussions regarding the use of a tape recorder had taken place but no tape recorder was actually given to PW3.

15.5. PW1 further deposed that after the recovery of the tainted money, a senior officer of the accused was called to the spot. When the accused was apprehended, a number of people had gathered outside the office but the CBI officials did not permit them to enter. PW1 denied the suggestion that when hand washes of the accused were taken for the first time in the sodium carbonate solution, the colour of the solution remained unchanged. He deposed that he could not recollect whether a waiter was subsequently asked to bring hot water and whether the hand washes were retaken in a sodium carbonate solution prepared in hot water.

15.6. To a court question as to whether during the post-raid proceedings conducted at the spot, PW11 and PW3 went anywhere with the accused, PW1 answered in the negative. PW1 further deposed that after apprehending the accused, the entire post-raid proceedings were conducted and he was thereafter made to sit in the adjoining room. PW1 denied the suggestion that when the parties met the accused for the second time, the accused informed PW3 that only his bill for ₹9,000/- had been sanctioned. He also denied the suggestion that upon hearing this, PW3 stated that he was in need of money and voluntarily offered the tainted money to the accused for clearance of his entire payment. He further denied the suggestion that on this, the accused declined to accept the bribe and advised PW3 to take payment of ₹9,000/- and leave. He denied the suggestion that PW3 thereafter forcibly put the tainted money into the pant pocket of the trousers of the accused.

16. PW5, Senior Assistant, NDMC, Health Establishment, Unit-III, New Delhi, deposed that on 29.11.1996, CBI officials came to the Vigilance Department of NDMC to requisition two witnesses. He was thereafter directed by the Vigilance Department to accompany the CBI officials. PW5 further deposed that while going for the raid, one audio recorder-cum-receiver was also used. A microphone was attached under the collar of the shirt of PW3, and the main machine, which was either a recorder or audio system, was kept in the official vehicle. An ear plug attached to the main instrument was with one Inspector of CBI whose name he could not recall.

16.1. At this juncture, the prosecutor is seen to have sought permission to "cross-examine" PW5 on the ground that he had resiled from the statement made to the CBI. The request was allowed by the trial court and on being further examined by the prosecutor, PW5 denied the suggestion that no electronic machine or transmitter had been used for the trap. He stated that he had heard voices through the transmitter via the said machine, though he could not remember whether he had mentioned the use of the electronic machine-cum-transmitter during the trap in his statement to the CBI. He denied the suggestion that no transmitter was attached under the collar of PW3 and that no electronic machine with an ear plug was kept in any official vehicle.

16.2. PW5 admitted that PW1 had been asked to give the signal by scratching his head. He further admitted that about five minutes after going into the building of Samrat Hotel, PW3 and PW1 came back and communicated that the transaction had not taken place, as the accused was not alone in his office. He was told about this by the Inspector who was hearing through the ear plug. PW5 admitted that at about 04:00 PM, PW3 and PW1 came out of the office of the accused and informed them that the accused was busy distributing salary and had asked them to come back at 05:00

PM. At around 05:00 PM, PW3 and PW1 were again sent to contact the accused in his office. At around 05:30 PM, the members of the trap party rushed into the office of the accused. PW5 stated he did not see PW1 giving any signal. He followed the CBI team into the room of the accused. PW5 admitted that on being confronted, the accused got perplexed. He was told by a CBI Inspector that the accused, after accepting the bribe, had kept it in his pocket. He could not admit or deny whether PW1 told the CBI team that the accused, after demanding the bribe, accepted it in his left hand, thereafter transferred the money to his right hand, and kept it in the right side pocket of his trousers after counting.

17. PW7 deposed that on 29.11.1996, he was posted as Manager (Vigilance-cum-Security) at Samrat Hotel as well as Ashoka Tours & Travels, ITDC, Azad Market. He identified the accused in court and stated that the accused was, at the relevant time, posted as Assistant Manager (Accounts). PW7 further deposed that 29.11.1996 was a pay day and that he was present on

duty at the complex. At about 03:30 PM, Sub-Inspector Vivek Dhir of CBI came to him. He accompanied Sub-Inspector Vivek Dhir to the office of the accused. Upon reaching the office, he noticed that two CBI officials were holding the accused by his respective wrists. PW11 who was also present there informed him that the accused had been caught while taking ₹500/- as bribe from PW3.

17.1. PW7, in his cross-examination, admitted that on 29.11.1996, he noticed cashier Shri R.D. Verma sitting in his cabin and disbursing salary, at which time the accused was sitting in his office. He noticed the cashier disbursing salary from his cabin at around 3:00 or 3:30 PM. He saw the accused in his cabin when the accused had already been apprehended by the CBI officers. When the accused was apprehended, no one from the Vigilance & Security Department senior to him was available at Samrat Hotel. PW7 could not recollect whether PW11 had prepared the sodium carbonate solution in water at the spot, but stated that the said solution was prepared by one member of the trap party. PW7 further deposed that in his presence, CBI officials seized two bills and some other documents from a file lying on the table of the accused, though he could not identify those bills or documents.

17.2. PW7 admitted that a complaint had been received in the Vigilance Department reporting that the date of birth of one employee, M.S. Chawla, driver, had been wrongly changed from 1929 to 1939. PW7 did not admit or deny whether the said complaint had been filed by A.I.T.U.C. Union, or whether he was the Management Representative in that complaint, or whether M.S. Upadhyaya was the defence assistant for the delinquent driver M.S. Chawla. PW7 denied the suggestion that M.S. Upadhyaya, who had represented the said driver in the enquiry, was present in the office on 29.11.1996 or that the latter had any conversation with the SP CBI, as well as the General Manager regarding corruption in the office. He denied the suggestion that he had recommended to the accused to make the payments of the bills of

M/s. Dixit Travelling Agency and M/s. Ex-Servicemen & Security Services.

17.3. PW11, the TLO, when examined fully supported the prosecution case.

18. I will first deal with the arguments advanced by the learned counsel for the appellant/accused. The first argument relates to the delay in forwarding the FIR to the Court. The incident occurred on 29.11.1996, which admittedly was a Friday. The intervening days were Saturday and Sunday. From the endorsement seen in the FIR, the same reached the Court on 02.12.1996 at 04:30 PM. However, it is not denied that the accused was produced before the trial court within the prescribed time and the relevant documents, including the FIR, had been placed before the Court. In such circumstances, the delay stands sufficiently explained and cannot be treated as indicative of any manipulation in the prosecution case.

19. With regard to the absence of the crime number in the handing over memo, the materials on record indicate that the trap proceedings were conducted on the very day the case was registered and the handing over memo formed part of the pre-trap formalities. The mere omission to mention the crime number in that document cannot lead to the inference that the proceedings were subsequently fabricated. Such omissions are procedural in nature and cannot outweigh the substantive evidence relating to the demand and acceptance of illegal gratification.

20. Emphasis was laid on the testimony of PW7, who deposed that when he reached the office of the accused at about 03:30 PM, he saw that the accused had been apprehended by CBI officials. The testimony of PW7 on this aspect reads thus:-

> *".....I noticed the cashier disbursing salary from his cabin at around 3:00 or 3:30 PM and Mohd. Yamin in his cabin when he was already apprehended by CBI officers....."*

This only means that PW7 had seen the cashier disbursing the salary at around 03:00 or 03:30 PM and that when he saw the accused, the latter had already been apprehended by the CBI. This does not mean that the arrest or apprehension was at 03:00 or 03:30 PM. Even if that be so, the said aspect has not materially affected the prosecution case. PW7 was not a member of the trap party and was called to the spot only after the proceedings had commenced. His statement regarding the time appears to be based on approximation and cannot override the consistent version of PW3, PW1 and PW11 regarding the events leading to the recovery of the tainted currency notes. Minor variations in the recollection of time are not uncommon in witness testimony and do not undermine the core of the prosecution case.

21. The trap proceedings itself was also sought to be questioned on the ground that the phenolphthalein powder used in the demonstration was already available in the room of the investigating officer. The evidence on record, however, clearly establishes that the currency notes were treated with phenolphthalein powder during the pre-trap proceedings and that a

demonstration of the reaction with sodium carbonate solution was carried out in the presence of the independent witnesses. The tainted notes were thereafter handed over to PW3 with instructions to deliver them to the accused only upon demand. The recovery of those very notes from the pocket of the accused, coupled with the positive phenolphthalein test, provides strong corroboration to the prosecution version and dispels the suggestion of manipulation.

22. Another aspect concerns the absence of any audio recording of the alleged conversation between PW3 and the accused. The evidence of PW3 indicates that no tape recorder was provided to him during the trap proceedings. PW1 has also clarified in his cross-examination that although there had been some discussion regarding the possible use of a recording device during the pre-trap proceedings, no such device was actually handed over to PW3. A reference was nevertheless made by PW5 to an electronic device described as a recorder-cum-transmitter with a microphone attached to the collar of PW3. This statement,

however, stands in clear contradiction to the evidence of PW3 and PW1. The solitary and inconsistent reference made by PW5 regarding the use of an electronic device cannot discredit the otherwise consistent evidence relating to the demand and acceptance of illegal gratification. In any event, the validity of trap proceedings does not depend upon the existence of an electronic recording when the demand and acceptance are established through direct testimony and corroborated by recovery of tainted currency notes.

23. The question whether PW3's bills had matured for payment was also sought to be projected as a circumstance rendering the prosecution case improbable. The defence evidence was referred to substantiate the argument that the bills had not matured for payment. Even assuming that the bills were not immediately payable, that circumstance does not take the case outside the scope of Section 7 of the PC Act as it stood at the relevant time. Acceptance of gratification as a motive or reward

for doing or forbearing to do an official act constitutes the offence irrespective of whether the public servant was actually in a position to grant the favour sought.

24. Similarly, regarding the alleged inconsistency relating to the wedding card also, whether PW3 required money for the marriage of his daughter, sister or any other family member is not material to the determination of the guilt of the accused. Such circumstances merely explain the reason why PW3 was anxious to obtain early payment of his bills and cannot be treated as affecting the credibility of the prosecution case.

25. The circumstance that the date of the incident happened to be a salary disbursement day in the office of the accused is equally inconsequential. The allegation is not that the payment of the bills was actually made on that day but that illegal gratification was demanded for processing the payment. The fact that salary disbursement was taking place does not preclude the possibility of such a demand.

26. Certain lapses in the investigation were also pointed out, particularly the failure of the PW10, the Investigating Officer, to independently verify whether PW3's bills had in fact been passed by the competent authority. While the investigation may not have been conducted with perfect thoroughness in every respect, it is well settled that defects in investigation do not by themselves render the prosecution case unacceptable if the substantive evidence on record establishes the commission of the offence. [See **Hema v. State, (2013) 10 SCC 192** and **C. Muniappan v. State of T.N. (2010) 9 SCC 567: (2010) 3 SCC (Cri) 1402**]

27. Though PW 1 and 5 were treated as "partially hostile", they have admitted all the material aspects of the prosecution case, to which I have already referred to in detail. Merely, because the witnesses are partially hostile is no ground to reject their entire testimony. It is settled that the testimony of hostile witnesses can be looked into to the extent it supports the prosecution case,

provided the same is credible. (**Mohan Lal v. State of Punjab; AIR 2013 SC 2408, Ramesh Harijan v. State of U.P.; AIR 2012 SC 1979, Prithi v. State of Haryana; (2010) 8 SCC 536, Lella Srinivasa Rao v. State of A.P.; AIR 2004 SC 1720, Koli Lakhmanbhai Chanabhai v. State of Gujarat; AIR 2000 SC 210**).

28. The testimony of PW3, clearly establishes that the accused demanded ₹500/- from him for processing the payment of his taxi bills. The testimony of PW1, who acted as the shadow witness and PW5, the recovery witness, corroborates this version. Their testimony is further corroborated by the recovery of the tainted currency notes from the possession of the accused. The numbers of the recovered notes were found to tally with the numbers recorded in the handing over memo prepared prior to the trap. The chemical test conducted thereafter revealed that the hand wash of the accused as well as the wash of the trouser pocket turned pink, thereby confirming the presence of phenolphthalein

powder. It is also relevant to note that the accused had not offered any plausible explanation for the presence of the tainted currency notes in the pocket of his trousers. The defence suggestion that the money was forcibly inserted into his pocket by PW3 has not been substantiated by any material evidence. It also emerges from the materials on record that when the appellant/accused was apprehended with the tainted currency notes, he did not raise any protest or demur before PW11 that the said notes had not been received by him. PW5 has deposed that upon being confronted, the accused appeared perplexed. However, on an overall perusal of the testimonies of PW1, PW3, PW5, PW7 and PW11, it does not emerge anywhere that the accused protested or asserted at the time of apprehension that the money had not been accepted by him. The absence of any such immediate denial assumes significance in the circumstances of the case. It is well settled that when tainted currency notes are recovered from the possession of the accused and no plausible explanation is offered for their presence, such recovery constitutes a strong incriminating circumstance supporting the prosecution case regarding demand and acceptance of illegal gratification [See **M. Narsinga Rao v. State of A.P., 2001 SCC (Cri) 258**].

29. I find no infirmity in the impugned judgment calling for an interference into the same by this Court.

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

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

CHANDRASEKHARAN SUDHA
(JUDGE)

MARCH 16, 2026
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